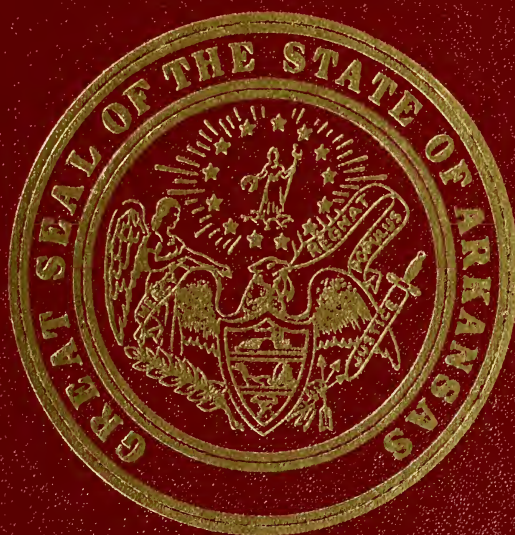


# ARKANSAS CODE OF 1987 ANNOTATED

OFFICIAL EDITION



VOLUME 6B • TITLE 9



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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 6B 2009 Replacement TITLE 9: FAMILY LAW

*Prepared by the Editorial Staff of the Publisher*

Under the Direction and Supervision of the  
ARKANSAS CODE REVISION COMMISSION

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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2009 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2009 Ark. LEXIS 489 (October 5, 2009) and 2009 Ark. App. LEXIS 614 (July 1, 2009).

Federal Supplement through September 1, 2009.

Federal Reporter 3d Series through September 1, 2009.

United States Supreme Court Reports through September 1, 2009.

Bankruptcy Reporter through September 1, 2009.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 21, p. 361.

## **Titles of the Arkansas Code**

- |   |  |
|---|--|
| 1. General Provisions   | 16. Practice, Procedure, and Courts                  |
| 2. Agriculture  | 17. Professions, Occupations, and<br>Businesses      |
| 3. Alcoholic Beverages  | 18. Property   |
| 4. Business and Commercial Law  | 19. Public Finance                                   |
| 5. Criminal Offenses  | 20. Public Health and Welfare                        |
| 6. Education  | 21. Public Officers and Employees                    |
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| 8. Environmental Law  | 23. Public Utilities and Regulated In-<br>dustries   |
| 9. Family Law   | 24. Retirement and Pensions                          |
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| 11. Labor and Industrial Relations                                      | 26. Taxation   |
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| 13. Libraries, Archives, and Cultural<br>Resources                      | 28. Wills, Estates, and Fiduciary Re-<br>lationships |
| 14. Local Government  |  |
| 15. Natural Resources and Economic<br>Development                       |  |



## **User's Guide**

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.





# TITLE 9

## FAMILY LAW

### *SUBTITLE 1. GENERAL PROVISIONS*

#### CHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. CHANGE OF NAME.
3. DOMICILE.
4. ARKANSAS DOMESTIC PEACE ACT.
5. ARKANSAS CHILD SAFETY CENTER ACT.
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15. DOMESTIC ABUSE ACT.
16. FAMILY PRESERVATION SERVICES PROGRAM ACT.
17. UNIFORM INTERSTATE FAMILY SUPPORT ACT.
18. QUALIFIED DOMESTIC RELATIONS ORDERS.
19. UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.
20. ADULT MALTREATMENT CUSTODY ACT.
- 21-24. [RESERVED.]

### *SUBTITLE 3. MINORS*

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26. RIGHTS RESPECTING BUSINESS AND PROPERTY.
27. JUVENILE COURTS AND PROCEEDINGS.
28. PLACEMENT OR DETENTION.
29. INTERSTATE COMPACTS.
30. CHILD ABUSE AND NEGLECT PREVENTION ACT.
31. YOUTH SERVICES.
32. CHILD WELFARE.
33. YOUTH VIOLENCE.
34. VOLUNTARY PLACEMENT OF A CHILD.

#### APPENDIX.

#### CHILD SUPPORT GUIDELINES

**Publisher's Notes.** The term "notice" is defined for this title at § 9-14-201(8). The term "income" is defined for this title at § 9-14-201(4)(A). The terms "child sup-

port order" and "support order" are defined for this title and the rest of the Code at § 9-14-201(2).

## ***SUBTITLE 1. GENERAL PROVISIONS***

### **CHAPTER 1 GENERAL PROVISIONS**

[Reserved]

### **CHAPTER 2 CHANGE OF NAME**

#### **SECTION.**

9-2-101. Name change — Procedure.

9-2-102. Name change — Use of new name.

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**Cross References.** Restoration of name on granting of divorce, § 9-12-318.

**Effective Dates.** Acts 1851, p. 72, § 4: effective on passage.

Acts 1985, No. 542, § 3: Mar. 25, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that some persons under supervision of the Department of Correction, have their names changed to avoid proper documentation of activities and to elude proper supervision and detection by law enforcement; that this places a hardship on the Department and on law enforcement officers in the State; that this Act is designed to prevent name changes of persons under supervision of the Department of Correction and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the pub-

lic peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 52, § 5: Feb. 13, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the circuit and chancery courts should have the power, upon good cause shown, to alter or change the name of any person, even persons in the custody of the Department of Correction; that this Act grants that power; and that this Act should be given effect immediately in order to grant the courts that power as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### **RESEARCH REFERENCES**

**A.L.R.** Circumstances justifying grant or denial of petition to change adult's name. 79 A.L.R.3d 562.

Rights and remedies of parents inter se with respect to the names of their children. 40 A.L.R.5th 697.

**Am. Jur.** 57 Am. Jur. 2d, Names, § 16 et seq.

**C.J.S.** 65 C.J.S., Names, §§ 21-28.

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#### **9-2-101. Name change — Procedure.**

(a) Upon the application of any person within the jurisdiction of the

court, the circuit court shall have power, upon good reasons shown, to alter or change the name of the person.

(b) When application is made to the court under this section, it shall be by petition in writing embodying the reasons for the application.

(c)(1) When allowed, the petition shall by order of the court be spread upon the record, together with the decree of the court.

(2) An appropriate order, as prescribed in this subsection, may be made by a circuit judge in vacation. This order shall have the same force and effect as if made at term time.

**History.** Acts 1851, §§ 1, 2, p. 72; C. & M. Dig., §§ 7756, 7757; Pope's Dig., §§ 10123, 10124; Acts 1943, No. 15, § 1; 1985, No. 542, § 1; A.S.A. 1947, §§ 34-801, 34-802; Acts 1989, No. 52, § 1.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Zakrzewski, Family Law — Petitions to Change a Minor's Surname: Arkansas Supreme Court Adopts "Clearly Erroneous" Standard of Review and Establishes Six-Factor Test. Huffman v. Fisher, 337 Ark. 58, 987 S.W.2d 269 (1999), 22 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

In General.  
Contest.  
Notice.

**In General.**

This section is merely in affirmation and in aid of, and supplementary to, the common-law rule that one may ordinarily change his name at will, without any legal proceedings, merely by adopting another name, that the right is not limited by the ordinary rules of minority and that the section only affords another method of doing so. Carroll v. Johnson, 263 Ark. 280, 565 S.W.2d 10 (1978); Stamps v. Rawlins, 297 Ark. 370, 761 S.W.2d 933 (1988).

**Contest.**

Chancery court did not err in allowing mother to change names of children to

name of second husband despite petition by first husband objecting to change. Clinton v. Morrow, 220 Ark. 377, 247 S.W.2d 1015 (1952).

A natural father has standing to challenge a proposed change of name of his minor child. Carroll v. Johnson, 263 Ark. 280, 565 S.W.2d 10 (1978).

Restraining order to prevent wife from changing child's name held warranted. Norton v. Norton, 268 Ark. 791, 595 S.W.2d 709 (Ct. App. 1980).

**Notice.**

Where a petition for the name change of minor children is made by one parent, notice must be given to the other parent, for to fail to do so is a violation of the due process clauses of both the state and federal constitutions. Carroll v. Johnson, 263 Ark. 280, 565 S.W.2d 10 (1978).

9-2-102. Name change — Use of new name.

Any person whose name may be so changed by judgment or decree of any of the circuit courts shall afterward be known and designated, sue and be sued, plead and be impleaded, by the name thus conferred, except that records of persons under the jurisdiction and supervision of the Department of Correction shall continue to reflect the name as committed to the department's jurisdiction and supervision by the various circuit courts of the State of Arkansas.



**History.** Acts 1851, § 3, p. 72; C. & M. Dig., § 7758; Pope's Dig., § 10125; A.S.A. 1947, § 34-803; Acts 1989, No. 52, § 2.

## CHAPTER 3

### DOMICILE

#### SECTION.

- 9-3-101. Chapter supplemental.
- 9-3-102. Voting privileges unaffected.
- 9-3-103. Jurisdiction of courts.
- 9-3-104. Administration by Secretary of State.
- 9-3-105. Rules and regulations.
- 9-3-106. Qualifications to become domiciled.
- 9-3-107. Sex or marital status not a bar.
- 9-3-108. Effect of marriage to resident.
- 9-3-109. Status of women who lost domicile by marriage.
- 9-3-110. Declaration of intent — Publication of notice — Exceptions.
- 9-3-111. Petition for domicile.
- 9-3-112. Public notice of petition and final hearing.

#### SECTION.

- 9-3-113. Declarations of applicant.
- 9-3-114. Hearings upon petitions — Final orders.
- 9-3-115. Admission within thirty days of general election prohibited.
- 9-3-116. Admission of surviving spouse and minor children.
- 9-3-117. Duties of clerks of court.
- 9-3-118. Clerk's fees — Deposits for witness expenses.
- 9-3-119. Cancellation of certificate — Renunciation of residence and domicile.
- 9-3-120. Certified copies of papers, etc., as evidence.

**Effective Dates.** Acts 1941, No. 355, § 21; Mar. 26, 1941. Emergency clause provided: "Whereas, the United States Supreme Court has held that the determination of domicile is a matter of fact, since no state has a statute definitely defining domicile, and

"Whereas, the state of Arkansas should have a statute defining domicile because people of wealth are refusing to move into

the state without being assured that their domicile would be determined to be in the state of Arkansas, and

"Therefore, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

### RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Domicile, § 1 et seq.

**A.L.R.** Domicile for state tax purposes

of wife living apart from husband. 82 A.L.R.3d 1274.

**C.J.S.** 28 C.J.S., Domicile, § 1 et seq.

### CASE NOTES

#### ANALYSIS

**Applicability.**  
County Residence.

#### Applicability.

Chapter inapplicable where party suing

for divorce was a resident domiciled in this state when the chapter took effect. *Feldman v. Feldman*, 205 Ark. 544, 169 S.W.2d 866 (1943).

#### County Residence.

This chapter does not regulate resi-

dence as between two counties in this state. *Feldman v. Feldman*, 205 Ark. 544, 169 S.W.2d 866 (1943).

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### **9-3-101. Chapter supplemental.**

It is the purpose of this chapter to set up a method, in addition to all others now provided by law, for determining the establishment of residence and domicile in Arkansas.

**History.** Acts 1941, No. 355, § 12; A.S.A. 1947, § 34-1312.

### **9-3-102. Voting privileges unaffected.**

Nothing in this chapter shall be construed to affect or extend the privilege of franchise to vote at any election held within the state because of having been admitted to become a resident domiciled within the state under this chapter.

**History.** Acts 1941, No. 355, § 6; A.S.A. 1947, § 34-1306.

### **9-3-103. Jurisdiction of courts.**

Exclusive jurisdiction to declare a person a resident domiciled in the State of Arkansas is conferred upon the circuit courts.

**History.** Acts 1941, No. 355, § 4; A.S.A. 1947, § 34-1304.

### **9-3-104. Administration by Secretary of State.**

The Secretary of State shall be the administrative officer of this chapter.

**History.** Acts 1941, No. 355, § 2; A.S.A. 1947, § 34-1302.

### **9-3-105. Rules and regulations.**

The Secretary of State shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this chapter.

**History.** Acts 1941, No. 355, § 3; A.S.A. 1947, § 34-1303.



**9-3-106. Qualifications to become domiciled.**

(a) Any person who is a citizen of the United States may become a resident and domiciled in the State of Arkansas.

(b) No person shall be admitted to become a resident domiciled in the State of Arkansas who has not resided in the state for at least thirty (30) days preceding his or her application for admission as a resident domiciled in the State of Arkansas.

**History.** Acts 1941, No. 355, §§ 1, 5; A.S.A. 1947, §§ 34-1301, 34-1305.

**9-3-107. Sex or marital status not a bar.**

The right of any citizen of the United States to become a resident domiciled in the State of Arkansas shall not be denied or abridged because of sex or marital status.

**History.** Acts 1941, No. 355, § 7; A.S.A. 1947, § 34-1307.

**9-3-108. Effect of marriage to resident.**

Any woman who marries a resident domiciled under this chapter shall not become a resident domiciled in this state by reason of the marriage. However, if eligible to become a resident domiciled under this chapter, she may become a resident domiciled in this state upon full and complete compliance with all requirements of this chapter.

**History.** Acts 1941, No. 355, § 8; A.S.A. 1947, § 34-1308.

**9-3-109. Status of women who lost domicile by marriage.**

A woman who, before March 26, 1941, had ceased to be a resident domiciled in this state may become a resident domiciled in this state as provided in § 9-3-108. After having received a certificate of domicile, she shall have the same status as if her marriage had taken place after March 26, 1941.

**History.** Acts 1941, No. 355, § 9; A.S.A. 1947, § 34-1309.

**9-3-110. Declaration of intent — Publication of notice — Exceptions.**

(a) Any person desiring to make a declaration of domicile under this chapter shall declare on oath before the clerk of any court authorized under this chapter to have jurisdiction, or the clerk's authorized deputy, in the county in which the person owns real estate and has resided for thirty (30) days after reaching eighteen (18) years of age, that it is his or her bona fide intention to become a resident domiciled in the State of

Arkansas and that he or she renounces his or her residence and domicile in the state in which he or she was last domiciled.

(b)(1)(A) The declaration shall set forth the name, date of birth, place of birth, occupation, personal description, name of the state and address of last residence, and the state in which he or she owns real or personal property.

(B) The declaration shall also state the name of his or her spouse, the date of the spouse's birth, the place of their marriage, the name of each child and the date of each child's birth, the name of the state, and the address at the date of the declaration.

(2)(A) The declaration shall have attached a certified copy of the notice published thirty (30) days prior to the declaration renouncing domicile in the states in which he or she owned real or personal property and in which the person formerly resided.

(B) The notice shall have been given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or states in which the notices are published.

(c)(1) No resident domiciled in the State of Arkansas in conformity with the law in force at the date of the declaration who has declared his or her intention to become a resident domiciled in this state shall be required to renew the declaration.

(2) Any person who, on or after March 26, 1941, has become a resident domiciled in this state under the provisions of the common law of the state or of § 9-12-307 shall not be required to make a declaration as provided in this chapter.

**History.** Acts 1941, No. 355, §§ 10, 12;  
A.S.A. 1947, §§ 34-1310, 34-1312.

### **9-3-111. Petition for domicile.**

(a)(1) Not less than ninety (90) days nor more than two (2) years after a declaration of intention has been made, the person shall make and file in duplicate a petition in writing.

(2) The petition shall be signed by the applicant in his or her own handwriting and duly verified.

(b)(1)(A) In the petition, the applicant shall state his or her full name, place of residence, street number if possible, occupation, the date and place of birth, the state where he or she last resided, the date and place of his or her first address within this state, and the time when and place and name of the court where he or she declared an intention to become a resident domiciled in the State of Arkansas.

(B) If the applicant is married, he or she shall state the name of his or her spouse and, if possible, the spouse's place of residence at the time of filing the petition.

(C) If the applicant has children, he or she shall state the name, date, and place of birth, and place of residence of each child living at the time of filing the petition.

(2)(A) The petition shall set forth that it is his or her intention to become a resident domiciled in the State of Arkansas, that he or she renounces absolutely domicile in the state in which he or she last resided or was domiciled, and that it is his or her intention to reside permanently in the State of Arkansas.

(B) The petition shall set forth whether he or she has been denied admission as a resident domiciled in the State of Arkansas and, if so, the ground or grounds of the denial, the court in which such decision was rendered, and that the cause for the denial has since been cured or removed and shall set forth every fact material to becoming a resident domiciled in the State of Arkansas and required to be proved upon the final hearing of his or her application.

(c) The petition shall be verified by the affidavits of at least two (2) credible witnesses, who are citizens of the State of Arkansas and who state in their affidavits that they personally know the applicant to have been a resident of the State of Arkansas for a period of at least ninety (90) days continuously next prior to the date of filing of his or her petition and that they each have personal knowledge that the petitioner is a person of good moral character and that he or she is in every way qualified in their opinion to become and to be a resident domiciled in the State of Arkansas.

(d) A petition to become a resident domiciled in the State of Arkansas may be made and filed during term time or in vacation and shall be docketed the same day as filed.

(e) However, in no case shall final action be had upon a petition until at least thirty (30) days have elapsed after its filing and the posting of the notice of the petition as provided for in § 9-3-112.

**History.** Acts 1941, No. 355, §§ 13, 15;  
A.S.A. 1947, §§ 34-1313, 34-1314.

### **9-3-112. Public notice of petition and final hearing.**

Immediately after filing of the petition, the clerk of the court shall give notice thereof by posting in a public and conspicuous place in his or her office or in the building in which the clerk's office is situated, under an appropriate heading, the name, residence, the state in which the petitioner formerly resided, the date and place of residence in Arkansas, the tentative date for final hearing of his or her petition, and the names of the witnesses whom the applicant expects to summon in his or her behalf.

**History.** Acts 1941, No. 355, § 16;  
A.S.A. 1947, § 34-1315.

### **9-3-113. Declarations of applicant.**

Before he or she is permitted under this chapter to be declared a resident domiciled in the State of Arkansas, the applicant shall declare in open court that he or she is a resident of Arkansas and that Arkansas



is his or her domicile, that he or she absolutely and entirely renounces residence and domicile in the state in which he or she formerly resided, and that he or she will support and defend the Constitution and laws of the United States of America and of the State of Arkansas.

**History.** Acts 1941, No. 355, § 14;  
A.S.A. 1947, § 34-1317.

### **9-3-114. Hearings upon petitions — Final orders.**

(a)(1) Every final hearing upon a petition to become a resident domiciled in the State of Arkansas shall be held in open court before a judge of this state.

(2) Every final order that may be made upon the petition shall be under the hand of the court and entered in full upon the records of the court.

(b)(1)(A) The clerk of the court, if the applicant requests it, shall issue a subpoena for the witnesses named by the applicant to appear upon the day set for final hearing.

(B) However, if the witnesses cannot be produced upon the final hearing, other witnesses may be summoned.

(2) At the final hearing of the petition, the applicant and witnesses shall be examined under oath in the presence of the court.

(c) The court upon proper finding shall enter a final order that the person applying to be declared a resident domiciled in the State of Arkansas has complied with the provisions of this chapter and is entitled to be declared a resident domiciled in the state, and the court shall order to be issued to the person the form of certificate of residence and domicile as shall be prescribed by the Secretary of State.

**History.** Acts 1941, No. 355, §§ 4, 16,  
17; A.S.A. 1947, §§ 34-1304, 34-1315, 34-  
1316.

### **9-3-115. Admission within thirty days of general election prohibited.**

No person shall be admitted as a resident domiciled in the State of Arkansas under this chapter, nor shall any certificate of residence and domicile be issued by any court, within thirty (30) days preceding the holding of any general election within the state.

**History.** Acts 1941, No. 355, § 6; A.S.A.  
1947, § 34-1306.

### **9-3-116. Admission of surviving spouse and minor children.**

When any person who has declared his or her intention to become a resident domiciled in the State of Arkansas dies before he or she has received a certificate from the Secretary of State showing him or her to be a resident domiciled in this state, the surviving spouse and minor

children of the person, by complying with the other provisions of this chapter, may become residents domiciled in the State of Arkansas without making any declaration of intention.

**History.** Acts 1941, No. 355, § 11;  
A.S.A. 1947, § 34-1311.

### **9-3-117. Duties of clerks of court.**

(a)(1) It shall be the duty of the clerk of the court exercising jurisdiction in matters of residence and domicile to send to the Secretary of State at Little Rock, within thirty (30) days after the issuance of a certificate of residence and domicile in the State of Arkansas, a duplicate of the certificate, and to make and keep on file in his or her office a stub for each certificate so issued by him or her.

(2) On the certificate shall be entered a memorandum of all the essential facts set forth in the certificate.

(b)(1) It shall also be the duty of the clerk of the court to report to the Secretary of State, within thirty (30) days after the final hearing and decision of the court, the name of every person who was denied residence and domicile under the provisions of this chapter.

(2) The clerk shall furnish to the Secretary of State duplicates of all petitions within thirty (30) days after the filing of the petitions and certified copies of other proceedings and orders instituted in or issued out of the court affecting or relating to residence and domicile as provided for under this chapter, as may be required from time to time by the Secretary of State.

**History.** Acts 1941, No. 355, § 18;  
A.S.A. 1947, § 34-1318.

### **9-3-118. Clerk's fees — Deposits for witness expenses.**

(a)(1) The clerk of the court exercising jurisdiction in matters provided for under this chapter shall charge, collect, and account for the following fees in each proceeding:

(A) For receiving and filing a declaration of intention and issuing a duplicate, five dollars (\$5.00);

(B) For making, filing, and docketing the petition of a person petitioning for admission under this chapter as a resident domiciled in the State of Arkansas and for the final hearing, twenty-five dollars (\$25.00);

(C) For entering the final order and issuing certificate of residence and domicile thereunder, if granted, twenty-five dollars (\$25.00).

(2) The fees collected by the clerk of the court in the residence and domicile proceeding shall be paid into the county general fund.

(b)(1) In addition to the fees required by this section and upon the filing of the petition to become a resident domiciled in the State of Arkansas, the petitioner shall deposit with, and pay to, the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing

and paying the legal fees of any witnesses for whom he or she may request a subpoena.

(2) Upon the final discharge of the witnesses, the witnesses shall receive, if they demand from the clerk, the customary and usual fees from the moneys that the petitioner shall have paid to the clerk for such purposes. The residue, if any, shall be returned by the clerk to the petitioner.

**History.** Acts 1941, No. 355, § 19;  
A.S.A. 1947, § 34-1319.

### **9-3-119. Cancellation of certificate — Renunciation of residence and domicile.**

(a)(1) It shall be the duty of the prosecuting attorney of a county, upon affidavit showing good cause, to institute proceedings in any court having jurisdiction under this chapter for the purpose of setting aside and cancelling any certificate issued under this chapter on the ground of fraud or on the ground that the certificate was illegally procured.

(2)(A) In any such proceeding, the party holding the certificate alleged to have been fraudulently or illegally procured shall have sixty (60) days' personal notice in which to make answer to the petition of the State of Arkansas.

(B) If the holder of the certificate is absent from the state or from the district in which he or she last had residence, the notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state.

(3) If any person who secures a certificate of residence and domicile under the provisions of this chapter shall, within two (2) years after the issuance of the certificate, cease to reside in the state more than thirty (30) days in any one (1) year, it shall be considered prima facie evidence of a lack of intention on the part of the person to become a permanent resident of the state at the time of the filing of the application for a certificate of residence and domicile and, in the absence of contrary evidence, it shall be sufficient evidence, in the proper proceeding, to authorize the cancellation of his or her certificate of residence and domicile as fraudulent.

(b)(1) Not less than two (2) years after a certificate of residence and domicile has been issued under this chapter, the person to whom the certificate has been issued may file a petition signed in duplicate in his or her own handwriting, duly verified, which shall state his or her full name, his or her place of residence with the street number, if possible, his or her occupation, his or her date and place of birth, the state in which he or she intends to reside, the date and place of his or her first address within this state, the time when and place and name of the court where he or she declared his or her intention to become a resident domiciled in the State of Arkansas, and the name of the court where he or she received his or her certificate of residence and domicile. If married, he or she shall state the name of his or her spouse, his or her



place of residence at the time of filing this petition, and if he or she has children, the name, date, and place of birth, and place of residence of each child living at the time of filing this petition.

(2) The petition shall set forth that he or she renounces absolutely his or her residence and domicile in the State of Arkansas and that it is his or her intention to reside permanently in a state other than Arkansas.

(c)(1) Whenever a certificate of residence and domicile is set aside or cancelled as provided in this section, the court in which the judgment or decree is rendered shall make an order cancelling the certificate and shall order a certified copy of the judgment sent to the Secretary of State.

(2)(A) If the certificate was not originally issued by the court making the order, the court shall direct the clerk of the court to transmit a copy of the order and judgment to the court out of which the certificate of residence and domicile was originally issued.

(B) It shall be the duty of the clerk of the court receiving the certified copy of the order and judgment of the court to enter the certified copy of the order and judgment of record and to cancel the original certificate of residence and domicile upon the records and to notify the Secretary of State of the cancellation.

**History.** Acts 1941, No. 355, § 20;  
A.S.A. 1947, § 34-1320.

### **9-3-120. Certified copies of papers, etc., as evidence.**

Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this chapter shall be admitted in evidence equally with the originals in any and all proceedings under this chapter and in all cases in which the originals might be admissible as evidence.

**History.** Acts 1941, No. 355, § 3; A.S.A.  
1947, § 34-1303.

## **CHAPTER 4**

### **ARKANSAS DOMESTIC PEACE ACT**

#### **SECTION.**

9-4-101. Title.

9-4-102. Definitions.

9-4-103. Duties of the Arkansas Child  
Abuse/Rape/Domestic Violence Commission.

9-4-104. Receipt of money.

9-4-105. Disbursement of funds.

#### **SECTION.**

9-4-106. Program requirements.

9-4-107. Fiscal requirements.

9-4-108. Training requirements.

9-4-109. Right of entry.

9-4-110. Reports.

9-4-111. Disclosure of information.

9-4-112. Immunity from civil liability.

## RESEARCH REFERENCES

**Ark. L. Rev.** Note, *Nef v. Ag Services of Landlord's Liens*, 56 Ark. L. Rev. 871  
*America, Inc.: Revised Article 9 Brings* (2004).  
*Uncertainty to Holders of Agricultural*

### 9-4-101. Title.

This chapter shall be known and may be cited as the "Arkansas Domestic Peace Act".

**History.** Acts 2003, No. 1276, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Family Law, Domestic Peace Act, 26 U. Ark. Little Rock L. Rev. 415.  
*Legislation, 2003 Arkansas General Assembly,*

### 9-4-102. Definitions.

As used in this chapter:

- (1) "Advocate" means an employee, supervisor, or administrator of a shelter;
- (2) "Commission" means the Arkansas Child Abuse/Rape/Domestic Violence Commission;
- (3) "Domestic abuse" means:
  - (A) Physical harm, bodily injury, or assault between family or household members;
  - (B) The infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or
  - (C) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state;
- (4) "Family or household members" means:
  - (A) Spouses;
  - (B) Former spouses;
  - (C) Parents;
  - (D) Children;
  - (E) Persons related by blood within the fourth degree of consanguinity;
  - (F) Persons who presently cohabit or in the past cohabited together; and
  - (G) Persons who presently have a child in common;
- (5) "Shelter" means any entity that:
  - (A) Provides services including food, housing, advice, counseling, and assistance to victims of domestic abuse and their minor dependent children in this state; and
  - (B) Meets the program, fiscal, and training requirements of this chapter;

(6) "Victim" means any individual who:

(A) Is eighteen (18) years of age or older, is a minor who has his or her disabilities removed, or is a married individual under eighteen (18) years of age;

(B) Is the victim of domestic abuse; and

(C) Seeks services at a shelter; and

(7) "Volunteer" means any person who donates his or her time to provide services to victims at a shelter.

**History.** Acts 2003, No. 1276, § 1.

### **9-4-103. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.**

(a) Regarding the administration of the Domestic Peace Fund and an entity receiving funding under this chapter, the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee, to the extent funding is appropriated and available, shall:

(1) Annually evaluate each shelter for compliance with the program, fiscal, and training requirements under this chapter;

(2) Promulgate rules, regulations, procedures, and forms for the evaluation of each shelter;

(3) Adopt a uniform system of recordkeeping to ensure the proper handling of funds by shelters;

(4) Provide training and technical assistance to shelters to ensure minimum standards of service delivery;

(5) Serve as a clearinghouse for information relating to domestic abuse; and

(6) Provide educational programs on domestic abuse for the benefit of the general public, victims, specific groups of persons, and other persons as needed.

(b)(1) The commission may enter into contracts with any entity to fulfill its duties under this chapter.

(2) The entity must meet the following requirements:

(A) The entity is organized as a statewide nonprofit corporation that provides services, community education, and technical assistance to domestic violence shelters in the state; and

(B) The entity is affiliated with one (1) or more of the following:

(i) The National Coalition Against Domestic Violence;

(ii) The National Network to End Domestic Violence; or

(iii) The Battered Women's Justice Project.

**History.** Acts 2003, No. 1276, § 1.

### **9-4-104. Receipt of money.**

Under this chapter and in the administration of the Domestic Peace Fund, the Arkansas Child Abuse/Rape/Domestic Violence Commission shall not accept money or other assistance from the federal government



or any other entity or person if the acceptance would obligate the State of Arkansas except to the extent that money is available in the fund.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-105. Disbursement of funds.**

(a) The Arkansas Child Abuse/Rape/Domestic Violence Commission may disburse money appropriated from the Domestic Peace Fund exclusively for the following purposes:

(1) To satisfy contractual obligations made to perform its duties under this section;

(2) To make grants to shelters that meet the requirements of this section; and

(3) To compensate the commission or its designee for administration costs associated with the performance of duties under this chapter.

(b) The commission shall collect a one-percent-fee not to exceed seven thousand five hundred dollars (\$7,500) annually from the fund for administrative and operational costs incurred under this chapter.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-106. Program requirements.**

Every shelter shall:

(1) Develop and implement a written nondiscrimination policy to provide services without regard to race, religion, color, age, marital status, national origin, ancestry, or sexual preference;

(2) Provide a facility that is open, accessible, and staffed by an advocate or a volunteer each day of the calendar year and twenty-four (24) hours each day;

(3) Provide emergency housing and related supportive services in a safe, protective environment for victims of domestic abuse and their children;

(4)(A) Provide a crisis telephone hotline that is answered by an advocate or a volunteer who meets the training requirements under this chapter each day of the calendar year and twenty-four (24) hours each day.

(B) The crisis telephone hotline shall not be answered by an answering machine, answering service, or mobile telephone;

(5)(A) Require all advocates and volunteers who provide direct services to victims to sign a written confidentiality agreement that prohibits the release of the following:

(i) The names or other personal and identifying information about the victims who are served at the shelter; and

(ii) The names or other personal and identifying information about the family or household members of the victims who are served at the shelter.

(B) The confidentiality agreement shall not apply to advocates who testify in court.

(C) The confidentiality agreement shall not prevent disclosure from federal grant review, audit, or reporting;

(6) Develop and implement a written plan for outreach efforts to aid victims of domestic violence;

(7) Provide peer support groups for victims;

(8) Provide assistance and court advocacy for victims seeking orders of protection; and

(9) Provide training and educational information on domestic violence for professionals, community organizations, and interested individuals.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-107. Fiscal requirements.**

Every shelter shall:

(1) Incorporate in this state as a private nonprofit corporation that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that has the primary purpose of providing services to victims of domestic abuse or domestic violence;

(2) Be governed by a board of directors;

(3) Develop and implement written personnel policies that state the shelter's employment practices;

(4) Develop and implement written procedures that conform with the uniform system of recordkeeping developed by the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee to ensure proper handling of funds; and

(5) Provide the commission or its designee with statistical data that states the following:

(A) The type of services provided by the shelter; and

(B) The number of victims and children served each year.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-108. Training requirements.**

Every shelter shall:

(1)(A) Require each member of its board of directors to attend an orientation approved by the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee within six (6) months after joining the board of directors.

(B) The orientation shall include an explanation of the dynamics of domestic violence and the role of a board member;

(2)(A) Require each advocate who provides direct services to victims to attend fifteen (15) hours of initial staff training approved by the commission or its designee.

(B) Initial staff training shall include the following topics of instruction:

(i) Crisis intervention;

(ii) Case management;

- (iii) Safety planning;
  - (iv) Individual or group facilitation; and
  - (v) Proper procedure for answering the crisis telephone hotline;
- (3)(A) Require each advocate who provides direct services to victims to attend ten (10) hours of continuing education annually that is approved by the commission or its designee.

(B) Continuing education shall include the following topics of instruction:

- (i) Crisis intervention;
- (ii) Case management;
- (iii) Safety planning;
- (iv) Individual or group facilitation; and
- (v) The proper procedure for answering the crisis telephone hotline; and

(4)(A) Require volunteers who provide direct services to victims to attend ten (10) hours of initial training approved by the commission or its designee.

(B) Initial staff training shall include the following topics of instruction:

- (i) Crisis intervention;
- (ii) Case management;
- (iii) Safety planning;
- (iv) Individual or group victim service session facilitation; and
- (v) The proper procedure for answering the crisis telephone hotline.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-109. Right of entry.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee may enter and inspect the premises of a shelter to perform an annual evaluation or to otherwise determine compliance with this chapter.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-110. Reports.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee shall provide an annual report by October 1 of each year to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs containing the following information:

- (1) The incidence of domestic violence in this state based on information obtained from shelters under this chapter;
- (2) A description of shelters that meet the requirements of and receive funding from the commission or its designee under this chapter; and



(3) The number of persons assisted by the shelters that receive funding from the commission or its designee under this chapter.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-111. Disclosure of information.**

Information received by the Arkansas Child Abuse/Rape/Domestic Violence Commission, its employees, or its designees through files, reports, evaluations, inspections, or otherwise shall be confidential information and shall not be disclosed publicly in a manner as to identify individuals or facilities.

**History.** Acts 2003, No. 1276, § 1.

#### **9-4-112. Immunity from civil liability.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission, its employees, and its designees shall be immune from civil liability for performing their duties under this chapter.

**History.** Acts 2003, No. 1276, § 1.

## **CHAPTER 5**

### **ARKANSAS CHILD SAFETY CENTER ACT**

#### **SECTION.**

9-5-101. Title.

9-5-102. Statewide purpose.

9-5-103. Definitions.

9-5-104. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.

9-5-105. Receipt of money.

9-5-106. Disbursement of funds.

9-5-107. Program requirements.

9-5-108. Access to specialized medical examinations and psychological examinations.

#### **SECTION.**

9-5-109. Eligibility for contracts.

9-5-110. Interagency memorandum of understanding.

9-5-111. Fiscal requirements.

9-5-112. Right of entry.

9-5-113. Reports.

9-5-114. Admissibility of statements by an alleged child victim.

9-5-115. Immunity from civil liability.

#### **9-5-101. Title.**

This chapter shall be known and may be cited as the "Arkansas Child Safety Center Act".

**History.** Acts 2007, No. 703, § 5.

#### **9-5-102. Statewide purpose.**

The statewide purpose of this chapter is to establish a program that provides a comprehensive, multidisciplinary, nonprofit, and coordinated response to the investigation of sexual abuse of children and

serious physical abuse of children in a child-focused and child-friendly facility known as a “child safety center”.

**History.** Acts 2007, No. 703, § 5.

### **9-5-103. Definitions.**

As used in this chapter:

(1) “Child safety center” means a not-for-profit child-friendly facility that provides a location for forensic interviews, forensic medical examinations, and forensic mental health examinations during the course of a child maltreatment investigation; and

(2) “Commission” means the Arkansas Child Abuse/Rape/Domestic Violence Commission.

**History.** Acts 2007, No. 703, § 5.

### **9-5-104. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.**

(a) Regarding the administration of the Arkansas Children’s Advocacy Center Fund and an entity receiving funding under this chapter, the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee, to the extent funding is appropriated and available, shall:

(1) Annually evaluate each child safety center for compliance with the program, fiscal, and training requirements under this chapter;

(2) Promulgate rules and procedures to implement this chapter and the forms for the evaluation of each child safety center;

(3) Adopt a uniform system of recordkeeping and reporting to ensure the proper handling of funds by child safety centers and to ensure uniformity and accountability by child safety centers; and

(4) Provide training and technical assistance to child safety centers to ensure best practice standards for forensic interviews and forensic medical examinations.

(b) The commission may enter into contracts with any entity to fulfill its duties under this chapter.

**History.** Acts 2007, No. 703, § 5.

### **9-5-105. Receipt of money.**

Under this chapter and in the administration of the Arkansas Children’s Advocacy Center Fund, the Arkansas Child Abuse/Rape/Domestic Violence Commission shall not accept money or other assistance from the federal government or any other entity or individual if the acceptance would obligate the State of Arkansas except to the extent that money is available in the fund.

**History.** Acts 2007, No. 703, § 5.

**9-5-106. Disbursement of funds.**

(a) The Arkansas Child Abuse/Rape/Domestic Violence Commission may disburse money appropriated from the Arkansas Children's Advocacy Center Fund exclusively for the following purposes:

(1) To satisfy contractual obligations made to perform its duties under this section;

(2) To make grants to child safety centers that meet the requirements of this section; and

(3) To compensate the commission or its designee for administration costs associated with the performance of duties under this chapter.

(b)(1) The commission may disburse funds, to the extent appropriated and available, from the Arkansas Children's Advocacy Center Fund to a qualified medical entity or a qualified mental health entity for education, peer review, and consultation to medical service examiners and mental health service examiners qualified under this section for children interviewed and examined at the child safety centers.

(2) A medical entity selected shall have physicians who:

(A) Have:

(i) Subspecialty training in pediatric medicine, emergency medicine, pediatric gynecology, family practice, or obstetrics and gynecology; and

(ii) Specialized training in the evaluation of child sexual abuse cases;

(B) Provide initial evaluations of allegedly abused and assaulted children and adolescents, perform second opinion examinations for less experienced examiners, and review photographs and videotapes for other examiners;

(C) Hold a teaching position or a faculty position at a college of medicine and provide training and workshops on child sexual abuse-related issues;

(D) Hold membership in professional organizations on child abuse-related and neglect-related issues;

(E) Work for or are affiliated with a regional center for the medical evaluation of allegedly sexually abused children; and

(F) Regularly testify in cases of alleged child sexual abuse.

(3) A mental health entity shall have professionals who:

(A) Are licensed mental health professionals;

(B) Have:

(i) Specialized training in assessment and treatment of children and families; and

(ii) Specialized training in trauma and child abuse;

(C) Provide assessment and treatment of allegedly abused children and adolescents;

(D) Provide consultation and training for other providers and multidisciplinary teams;

(E) Hold a teaching or faculty position;

(F) Hold membership in professional organizations on child abuse-related and neglect-related issues;



- (G) Work for or are affiliated with a regional center for the medical evaluation of allegedly sexually abused children; and
- (H) Regularly testify in cases of alleged child sexual abuse.

**History.** Acts 2007, No. 703, § 5.

### **9-5-107. Program requirements.**

Each child safety center shall:

- (1) Provide a comfortable, private, child-friendly setting that is both physically and psychologically safe for diverse populations of children and their families;
- (2) Be a part of a multidisciplinary team;
- (3) Have a nonprofit entity responsible for program, fiscal operations established, and implement best administrative practices;
- (4) Promote policies, practices, and procedures that are culturally competent;
- (5) Promote forensic interviews that are:
  - (A) Legally sound;
  - (B) Of a neutral, fact-finding nature; and
  - (C) Coordinated to avoid duplicative interviewing;
- (6) Provide or provide access to, or both, specialized medical evaluations and treatment services to all child safety center clients;
- (7) Provide team discussion and information-sharing regarding the investigation, case, and status needed on a routine basis by the child and family; and
- (8) Develop and implement a system for monitoring case progress and tracking case outcomes.

**History.** Acts 2007, No. 703, § 5.

### **9-5-108. Access to specialized medical examinations and psychological examinations.**

- (a) The child safety centers shall provide or provide access to specialized medical examinations and psychological examinations for their clients, to the extent funding is appropriated and available.
- (b) Medical providers operating under this chapter shall be capable of performing:
  - (A) A complete medical history;
  - (B) An evaluation of a child or an adolescent for evidence of sexual abuse or sexual assault including photo documentation of examination findings for recognition of genital and anal findings that are clearly normal or normal variants and common patterns of healed injuries;
  - (C) Collection of forensic evidence;
  - (D) Evaluation for sexually transmitted diseases, pregnancy, and other related sexual abuse and assault;
  - (E) Performance of tests and treatment as appropriate; and
  - (F) Testimony in court as to the findings.

**History.** Acts 2007, No. 703, § 5.

### **9-5-109. Eligibility for contracts.**

(a) A public entity or a nonprofit entity is eligible for a contract under § 9-5-107 if the entity:

(1) Has a signed memorandum of understanding as provided by § 9-5-110;

(2) Operates under the authority of a governing board;

(3) Participates on a multidisciplinary team of persons involved in the investigation or prosecution of child abuse cases;

(4) Has developed a method of statistical information gathering on children receiving services through the child safety center and shares the statistical information with the statewide organization, the Department of Human Services, and the Attorney General upon request;

(5) Has a volunteer program;

(6) Employs an executive director who is answerable to the board of directors of the public or nonprofit entity and who is not the exclusive salaried employee of any public agency partner;

(7) Provides for ongoing training for child safety center staff to provide best practices in forensic interviewing and medical and mental examinations to children who are examined at child safety centers; and

(8) Operates under a working protocol that includes, at a minimum, a statement of:

(A) The child safety center's mission;

(B) Each agency's role and commitment to the child safety center;

(C) The type of cases to be handled by the child safety center;

(D) The child safety center's procedures for conducting case reviews and forensic interviews and for ensuring access to specialized medical services and mental health services; and

(E) The child safety center's policies regarding confidentiality and conflict resolution.

(b)(1) The commission may waive the requirements specified in subsection (a) of this section if the commission determines that the waiver will not adversely affect the child safety center's ability to carry out its duties under this chapter.

(2) Any waiver that is granted under subdivision (b)(1) of this section shall be identified in the written contract with the child safety center.

(c) Funds shall be withheld from an established child safety center that no longer meets the standards for funding.

**History.** Acts 2007, No. 703, § 5.

### **9-5-110. Interagency memorandum of understanding.**

(a) Before a child safety center may be established under this chapter, a memorandum of understanding regarding the agreement on the levels of participation of each entity shall be executed among:

(1) The Division of Children and Family Services of the Department of Human Services;

(2) The Crimes Against Children Division of the Department of Arkansas State Police;

(3) Representatives of county and municipal law enforcement agencies that investigate child abuse in the area to be served by the child safety center; and

(4) The prosecuting attorney.

(b) A memorandum of understanding executed under this section shall include the agreement on the levels of each entity's participation and cooperation in:

(1) Developing a cooperative, multidisciplinary-team approach to investigations of child abuse;

(2) Reducing, to the greatest extent possible, the number of interviews required of a victim of child abuse with the goal of minimizing the negative impact of the investigation on the child; and

(3) Developing, maintaining, and supporting, through the child safety center, an environment that emphasizes the best interests of children and that provides best practices in child abuse investigations.

(c) A memorandum of understanding executed under this section may include the agreement of one (1) or more participating entities to provide office space and administrative services necessary for the child safety center's operation.

**History.** Acts 2007, No. 703, § 5.

### **9-5-111. Fiscal requirements.**

Every child safety center shall:

(1) Incorporate in this state as a private nonprofit corporation that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as it existed on January 1, 2007, and that has the primary purpose of providing services to child victims of child abuse;

(2) Be governed by a board of directors;

(3) Develop and implement written personnel policies that state the child safety center's employment practices;

(4) Develop and implement written procedures that conform with the uniform system of recordkeeping developed by the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee to ensure proper handling of funds; and

(5) Provide the commission or its designee with statistical data that states the following:

(A) The type of investigative services and the number of children served by each type of investigative service provided by the child safety centers;

(B) The number, race, age, and gender of the children served each year; and

(C) The outcomes of services to children provided by the child safety centers, including without limitation:

(i) The number of founded maltreatment reports; and



(ii) The number of unfounded maltreatment reports and the ratio between founded and unfounded reports for each year.

**History.** Acts 2007, No. 703, § 5.

### **9-5-112. Right of entry.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee may enter the premises of a child safety center at any time to ensure compliance with this chapter and the rules promulgated by the commission under this chapter.

**History.** Acts 2007, No. 703, § 5.

### **9-5-113. Reports.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee shall provide an annual report by March 1 of each year to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs containing the following information:

(1) The incidence of child abuse in this state based on information obtained from child safety centers under this chapter;

(2) A description of child safety centers that meet the requirements of and receive funding from the commission or its designee under this chapter;

(3) The number of children receiving investigative services by the child safety centers that receive funding from the commission or its designee under this chapter; and

(4) Outcome data provided by the child safety centers.

**History.** Acts 2007, No. 703, § 5.

### **9-5-114. Admissibility of statements by an alleged child victim.**

Nothing in this chapter precludes the admissibility of statements by an alleged child victim outside the scope of the forensic interview conducted at a child safety center, provided that sufficient safeguards are present to satisfy the admissibility requirements set forth in the Arkansas Rules of Evidence, relevant case law, and constitutional requirements.

**History.** Acts 2007, No. 703, § 5.

### **9-5-115. Immunity from civil liability.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission and its employees in their official capacities shall be immune from civil liability for performing their duties under this chapter.

**History.** Acts 2007, No. 703, §§ 5, 18.

CHAPTERS 6-7

[Reserved]

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER 8

GENERAL PROVISIONS

SUBCHAPTER.

- 1. COURT-ORDERED INVESTIGATIONS OR STUDIES.
- 2. ARKANSAS SUBSIDIZED GUARDIANSHIP ACT.
- 3. RESTRICTIONS ON UNMARRIED ADULTS AS ADOPTIVE OR FOSTER PARENTS.

SUBCHAPTER 1 COURT-ORDERED INVESTIGATIONS OR STUDIES

SECTION.

9-8-101. Definitions.

9-8-102. Investigation, study, or supervi-

sion involving children —  
Court order — Fee.

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**A.C.R.C. Notes.** Due to the enactment of subchapter 2 by Acts 2007, No. 621, the existing provisions of this chapter have been redesignated as subchapter 1.

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9-8-101. Definitions.

As used in this subchapter:

- (1) “Child” means a person under eighteen (18) years of age;
- (2) “Division” means the Division of Children and Family Services of the Department of Human Services;
- (3) “Investigation” means the process of obtaining a home study, home report, home assessment, home evaluation, or marital study;
- (4) “Licensed social worker” means a social worker authorized to perform home studies or supervised visits under the Social Work Licensing Act, § 17-103-101 et seq.;
- (5) “Regulations” means regulations promulgated by the division for the purpose of implementing this subchapter pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
- (6) “Study” means home study, home report, home assessment, home evaluation, or marital study; and
- (7) “Supervision” means periodic visitation to the home or school or other places for monitoring or observation to determine a child’s situation or condition or to regulate or facilitate visitation and may include court appearances to provide testimony on the visitation.

**History.** Acts 1991, No. 1081, § 1; 2001, No. 1420, § 1.

**Publisher's Notes.** Former § 9-8-101, concerning the fee for court-ordered investigations, etc., of children not being pro-

vided public services, was repealed by Acts 1991, No. 1081, § 1. The former section was derived from Acts 1987, No. 978, §§ 1-3. For present law, see § 9-8-102.

### **9-8-102. Investigation, study, or supervision involving children — Court order — Fee.**

(a)(1) If a court of the State of Arkansas requests or orders a licensed social worker of the court's choice to perform any investigation, study, or supervision involving the custody, placement, adoption, or other pertinent matter with regard to a child or children, the licensed social worker selected by the court may charge a fee that shall not exceed the fair market value of the investigation, study, or supervision.

(2)(A) The Division of Children and Family Services of the Department of Human Services shall not be ordered by any court, except the juvenile division of circuit court, to conduct an investigation, study, or supervision unless the court has first determined the responsible party to be indigent.

(B) The investigation, study, or supervision is to take place within the State of Arkansas.

(b) When the court requests or orders a licensed social worker to perform an investigation, study, or supervision, the court shall specify the party or parties responsible for payment of the fee and may grant a reasonable period of time for payment.

(c) If payment is not made within the established time frame as set forth in the court order or as prescribed by regulations, the obligation shall be considered a delinquent debt, as defined by regulation, and the licensed social worker may recover the fee as provided by law for the recovery of a debt.

**History.** Acts 1991, No. 1081, § 2; 1995, No. 1283, § 1; 2001, No. 1420, § 2; 2003, No. 338, § 1.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General As-

sembly, Family Law, Home Study, 26 U. Ark. Little Rock L. Rev. 408.

### **SUBCHAPTER 2 — ARKANSAS SUBSIDIZED GUARDIANSHIP ACT**

#### **SECTION.**

9-8-201. Title — Purpose.

9-8-202. Administration, funding, and limitations.

9-8-203. Promulgation of regulations.

9-8-204. Eligibility.

#### **SECTION.**

9-8-205. Guardianship subsidy agreement.

9-8-206. Subsidy amount.

9-8-207. Records confidential.



**9-8-201. Title — Purpose.**

(a) This subchapter shall be known and may be cited as the “Arkansas Subsidized Guardianship Act”.

(b) The purpose of this subchapter is to create the framework for subsidized guardianships in the event that funding becomes available for such a program.

**History.** Acts 2007, No. 621, § 1.

**9-8-202. Administration, funding, and limitations.**

(a) Contingent upon adequate funding, appropriation, and position authorization, both programmatic and administrative, the Department of Human Services shall establish and administer a program of subsidized guardianship.

(b) Guardianship subsidies and services for children under this program shall be provided out of funds appropriated to the department or made available to it from other sources and shall be subject to any restrictions as outlined in the funds appropriated or made available to the department.

**History.** Acts 2007, No. 621, § 1.

**9-8-203. Promulgation of regulations.**

(a) The Department of Human Services shall promulgate rules and regulations to implement this program.

(b) The department shall promulgate rules and regulations that include eligibility requirements in accordance with any requirements from the funding stream.

**History.** Acts 2007, No. 621, § 1.

**9-8-204. Eligibility.**

(a) A child is eligible for a guardianship subsidy if the Department of Human Services determines the following:

(1) The child has been removed from the custody of his or her parent or parents as a result of a judicial determination to the effect that continuation in the custody of the parent or parents would be contrary to the welfare of the child;

(2) The department is responsible for the placement and care of the child;

(3) Being returned home or being adopted is not an appropriate permanency option for the child;

(4) Permanent placement with a guardian is in the child’s best interest;

(5) The child demonstrates a strong attachment to the prospective guardian and the guardian has a strong commitment to caring permanently for the child;



(6) With respect to a child who has attained fourteen (14) years of age, the child has been consulted regarding the guardianship;

(7) If permitted or required by the funding stream, the guardian is qualified pursuant to a means-based test;

(8) If permitted or required by the funding stream, the necessary degree of relationship exists between the prospective guardian and the child;

(9) The child has special needs; and

(10) The child:

(A) Is eligible for Title IV-E foster care maintenance payments; and

(B) While in the custody of the department, resided in the home of the prospective relative guardian for at least six (6) consecutive months and the prospective relative guardian was licensed or approved as meeting the licensure requirements as a foster family home.

(b)(1) The department shall redetermine eligibility of the guardianship on an annual basis and shall include confirmation that the guardian is still providing care for the child.

(2) If permitted or required by the funding stream, the annual redetermination of eligibility shall include whether or not the guardian is qualified pursuant to a means-based test.

**History.** Acts 2007, No. 621, § 1; 2009, No. 325, § 1.

**Amendments.** The 2009 amendment added (a)(10) and made related changes.

### **9-8-205. Guardianship subsidy agreement.**

(a) A written guardianship subsidy agreement must be entered before the guardianship is established.

(b) The guardianship subsidy agreement shall become effective upon entry of the order of guardianship.

(c)(1) In the case of a child whose eligibility is based on a high risk for development of a serious physical, mental, developmental, or emotional condition, the guardianship subsidy agreement shall provide no guardianship subsidy until the child actually develops the condition.

(2) No guardianship subsidy shall be made until adequate documentation is submitted by the guardian showing that the child has now developed the condition upon which eligibility was based.

(3) Upon acceptance by the Department of Human Services that the child has developed the condition upon which eligibility was based, the guardianship subsidy shall be retroactive to the date the guardian submitted adequate documentation that the child developed the condition.

(d) No guardianship subsidy may be made for any child who has attained eighteen (18) years of age unless permitted by the funding stream.

**History.** Acts 2007, No. 621, § 1.

**9-8-206. Subsidy amount.**

(a) The amount of the guardianship subsidy shall be determined through agreement between the guardian and the Department of Human Services but cannot exceed the current foster care board rate.

(b) The amount of the guardianship subsidy shall be based on consideration of the circumstances and needs of the guardian and the child as well as the availability of other resources to meet the child's needs.

**History.** Acts 2007, No. 621, § 1.

**9-8-207. Records confidential.**

(a) All subsidized guardianship records personally identifying a juvenile shall be confidential and shall not be released or otherwise made available except to the following persons or entities and to the extent permitted by federal law:

- (1) The guardian;
- (2) The attorney for the guardian;
- (3) The child;
- (4) The attorney ad litem for the child;
- (5) For purposes of review or audit by the appropriate federal or state agency;

(6) A grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the grand jury or court;

(7)(A) Individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(B) No disclosure of any information that identifies by name or address any recipient of a subsidy or service shall be made to any committee or legislative body; and

(8) The administration of any federal program or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need.

(b)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any personally identifying information obtained pursuant to this section.

(2) Nothing in this subsection shall prevent subsequent disclosure by the guardian or the child.

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

**History.** Acts 2007, No. 621, § 1.

### SUBCHAPTER 3 — RESTRICTIONS ON UNMARRIED ADULTS AS ADOPTIVE OR FOSTER PARENTS

## SECTION.

9-8-301. Finding and declaration.

9-8-302. Public policy.

9-8-303. Definition.

9-8-304. Adoption and foster care of minors.

## SECTION.

9-8-305. Guardianship of minors.

9-8-306. Regulations.

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**Publisher's Notes.** Initiated Measure 2008, No. 1, was initiated and adopted by the people of Arkansas at the November 2008 general election. The enactment of

this subchapter was adopted at the November 2008 general election.

**Effective Dates.** Init. Meas. 2008, No. 1, § 7: Jan. 1, 2009.

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#### 9-8-301. Finding and declaration.

The people of Arkansas find and declare that it is in the best interest of children in need of adoption or foster care to be reared in homes in which adoptive or foster parents are not cohabiting outside of marriage.

**History.** Init. Meas. 2008, No. 1, § 5.

#### 9-8-302. Public policy.

The public policy of the state is to favor marriage as defined by the constitution and laws of this state over unmarried cohabitation with regard to adoption and foster care.

**History.** Init. Meas. 2008, No. 1, § 4.

#### 9-8-303. Definition.

As used in this subchapter, "minor" means an individual under eighteen (18) years of age.

**History.** Init. Meas. 2008, No. 1, § 3.

#### 9-8-304. Adoption and foster care of minors.

(a) A minor may not be adopted or placed in a foster home if the individual seeking to adopt or to serve as a foster parent is cohabiting with a sexual partner outside of a marriage that is valid under the Arkansas Constitution and the laws of this state.

(b) The prohibition of this section applies equally to cohabiting opposite-sex and same-sex individuals.

**History.** Init. Meas. 2008, No. 1, § 1.



**9-8-305. Guardianship of minors.**

This subchapter will not affect the guardianship of minors.

**History.** Init. Meas. 2008, No 1, § 2.

**9-8-306. Regulations.**

The Director of the Department of Human Services or the successor agency or agencies responsible for adoption and foster care shall promulgate regulations consistent with this subchapter.

**History.** Init. Meas. 2008, No. 1, § 6.

**CHAPTER 9**  
**ADOPTION**

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REVISED UNIFORM ADOPTION ACT.
3. CHILDREN IN PUBLIC CUSTODY — CONSENT TO ADOPTION.
4. ARKANSAS SUBSIDIZED ADOPTION ACT.
5. VOLUNTARY ADOPTION REGISTRY.
6. LEGAL REPRESENTATION.
7. THE STREAMLINE ADOPTION ACT.

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**RESEARCH REFERENCES**

**A.L.R.** Marital status or relationship of prospective adopting parents. 2 A.L.R.4th 555; 42 A.L.R.4th 776.

Criminal liability of one arranging for adoption of child through other than licensed child placement agency (“baby broker acts”). 3 A.L.R.4th 468.

Change in record of birthplace of adopted child. 14 A.L.R.4th 739.

Race as factor in adoption proceedings. 34 A.L.R.4th 167.

Natural parent’s parental rights as affected by consent to child’s adoption by other natural parent. 37 A.L.R.4th 724.

Spouse of adopting parent: consent to adoption. 38 A.L.R.4th 768.

Sexual relationship between parties as affecting right to adopt. 42 A.L.R.4th 776.

Validity of agreement to pay expenses of birth on condition that natural parents consent to adoption of child. 43 A.L.R.4th 935.

Parties in adoption proceedings. 48 A.L.R.4th 860.

Action for wrongful adoption based on

misrepresentation of child’s mental or physical condition or parentage. 56 A.L.R.4th 375.

Adoption as precluding testamentary gift under natural relative’s will. 71 A.L.R.4th 374.

Post-adoption visitation by natural parents. 78 A.L.R.4th 218.

Liability of public or private agency or its employees to prospective adoptive parents in contract or tort for failure to complete arrangement for adoption. 8 A.L.R.5th 860.

Validity of natural parent’s “blanket” consent to adoption which fails to identify adoptive parents. 15 A.L.R.5th 1.

Attorney malpractice in connection with services related to adoption of a child. 18 A.L.R.5th 892.

Adoption of child by same-sex partners. 27 A.L.R.5th 54.

Adopted child as within class in testamentary gift. 36 A.L.R.5th 395.

Adopted child as within class in deed or inter vivos trust instrument. 37 A.L.R.5th 237.



Rights of an unwed father to obstruct adoption of his child by withholding consent. 61 A.L.R.5th 151.

"Wrongful adoption" causes of action against adoption agencies where children have or develop mental or physical problems which are misrepresented or not disclosed to adoptive parents. 74 A.L.R.5th 1.

Determination of status of surrogate parents as legal or natural parents in contested surrogacy births. 77 A.L.R.5th 567.

**Am. Jur.** 2 Am. Jur. 2d, Adoption, § 1 et seq.

**Ark. L. Rev. Note**, How a State's Inter-

ests in a Child's Welfare Are Frustrated by Indiscriminate Application of the Final Judgment Rule: Arkansas Department of Human Services v. Lopez, 44 Ark. L. Rev. 895.

**C.J.S.** 2 C.J.S., Adoption, § 1 et seq.

7 C.J.S., Atty & C, §§ 6, 7, 45.

34 C.J.S., Ex & Ad, § 777.

37 C.J.S., Fraud, §§ 28, 103.

67A C.J.S., Parent & C, § 34.

81 C.J.S., Soc Sec & PW, § 41.

97 C.J.S., Witnesses, § 282.

99 C.J.S., Workers' Comp, §§ 275-277.

**U. Ark. Little Rock L.J.** Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

9-9-101. Surrender of custody of minor by hospital or birthing center.

9-9-102. Religious preference — Removal of barriers to interethnic adoption — Preference to

### SECTION.

relative caregivers for a child in foster care.

9-9-103. Adoption home studies affidavit.

9-9-104. Adoption information collection.

**Cross References.** Child welfare agency licensing, § 9-28-401 et seq.

Interstate compact on placement of children, § 9-29-201 et seq.

**Effective Dates.** Acts 1997, No. 216, § 5: Feb. 19, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to adoption and out-of-home placement of children; that failure to amend State law to mirror those federal laws will jeopardize the federal funding necessary for the State to accomplish adoptions and out-of-home

placement; that this act provides for the necessary amendments to State law. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### 9-9-101. Surrender of custody of minor by hospital or birthing center.

(a) After a consent to adoption under § 9-9-208 or a relinquishment of parental rights under § 9-9-220 is executed with regard to a minor in the physical custody of a hospital or birthing center within the State of Arkansas, the biological mother of a minor child may authorize the

release of the child from the hospital or birthing center to the petitioner for adoption, the guardian of the minor child, the child placement agency licensed under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., the Division of Children and Family Services of the Department of Human Services, or the attorney acting on behalf of any of the foregoing entities.

(b)(1) A hospital or birthing center release form under this section must:

(A) Be executed in writing;

(B) Be witnessed by two (2) credible adults;

(C) Authorize the petitioner for adoption, the guardian of the minor child, the licensed child placement agency, the division, or the attorney acting on the behalf of any of the foregoing entities to obtain any medical treatment, including circumcision of a male child, reasonably necessary for the care of the minor and to authorize any physician or medical services provider to furnish additional services deemed reasonable and necessary; and

(D) Be verified before a person authorized to take oaths.

(2) If a hospital or birthing center surrenders custody of a minor child to the petitioner for adoption, the guardian of the minor child, a licensed child placement agency, the division, or the attorney acting on behalf of any of the foregoing entities, the hospital or birthing center releasing the minor shall not be liable to any person because of its acts if the hospital or birthing center has complied with this section.

(c)(1) A hospital or birthing center shall comply with the terms of a release executed under this section without requiring a court order.

(2) Once the hospital or birthing center release form described in subsection (b) of this section is presented to the hospital or birthing center, the hospital or birthing center shall discharge the minor child to the petitioner for adoption, the guardian of the minor child, a licensed child placement agency, the division, or the attorney acting on the behalf of any of the foregoing entities after the hospital or birthing center is presented photo identification of the receiving party.

**History.** Acts 1971, No. 169, § 1; A.S.A. 1947, § 56-125; Acts 1987, No. 1060, § 8; 2001, No. 1737, § 1.

## RESEARCH REFERENCES

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.  
**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

## 9-9-102. Religious preference — Removal of barriers to inter-ethnic adoption — Preference to relative caregivers for a child in foster care.

(a) In all custodial placements by the Department of Human Services in foster care or investigations conducted by the department

pursuant to court order under § 9-9-212, preferential consideration shall be given to an adult relative over a nonrelated caregiver, provided that the relative caregiver meets all relevant child protection standards and it is in the child's best interest to be placed with the relative caregiver.

(b) The department and any other agency or entity that receives federal assistance and is involved in adoption or foster care placement shall not discriminate on the basis of the race, color, or national origin of the adoptive or foster parent or the child involved nor delay the placement of a child on the basis of race, color, or national origin of the adoptive or foster parents.

(c) If the child's genetic parent or parents express a preference for placing the child in a foster home or an adoptive home of the same or a similar religious background to that of the genetic parent or parents, the court shall place the child with a family that meets the genetic parent's religious preference, or if a family is not available, to a family of a different religious background that is knowledgeable and appreciative of the child's religious background.

(d) The court shall not deny a petition for adoption on the basis of race, color, or national origin of the adoptive parent or the child involved.

**History.** Acts 1987, No. 857, § 1; 1995, No. 956, § 1; 1997, No. 216, § 1.

#### RESEARCH REFERENCES

**Ark. L. Rev.** Chiles, A Hand to Rock the Cradle: Transracial Adoption, the Multi-ethnic Placement Act, and a Proposal for the Arkansas General Assembly, 49 Ark. L. Rev. 501.

#### **9-9-103. Adoption home studies affidavit.**

(a) Upon the request of any interested party, agency, or the court, the petitioner in any adoption proceeding shall file with the court an affidavit stating the number of adoption home studies conducted on the petitioner's home prior to the filing of the petition.

(b) A copy of each adoption home study performed shall be attached to the affidavit.

**History.** Acts 1993, No. 598, § 1.

#### **9-9-104. Adoption information collection.**

(a) The General Assembly finds that:

(1) There is a need for more information on adoptions that occur in Arkansas;

(2) No governmental agency has the responsibility for gathering information on Arkansas adoptions; and



(3) Without adequate data, the General Assembly cannot make informed decisions regarding changes that may need to be made to adoption laws.

(b) The Office of Chief Counsel of the Department of Human Services shall prepare an adoption information sheet and shall distribute the information sheet to each of the circuit clerks in the state for distribution to each petitioner seeking to file an adoption pleading in the state.

(c) Before the entry of an interlocutory or final decree of adoption, the petitioner shall complete the adoption information sheet and return it to the clerk.

(d) The clerk shall mail the completed form to the Office of Chief Counsel of the Department of Human Services.

(e) The adoption information sheet shall include without limitation:

- (1) The age of the minor to be adopted;
- (2) The state in which the minor was born;
- (3) The state in which the minor resided before the adoption;
- (4) The state of residence of the birth mother;
- (5) The age of each adoptive parent;
- (6) The state in which each adoptive parent resides;
- (7) Whether the adoption placement was made by a licensed Arkansas adoption agency and, if so, the name of the agency;
- (8) Whether the adoption placement was made by:
  - (A) A private physician;
  - (B) A private attorney; or
  - (C) An out-of-state entity or individual;
- (9) Whether the adoptive parents are married or single;
- (10) Whether the adoptive parent is a stepparent or second-parent adoptive parent;
- (11) Whether the adoptive parent is a family member of the minor child; and
- (12) An approximate amount for costs paid by the petitioner in the adoption.

(f) Personally identifiable information regarding the child to be adopted or regarding an adoptive parent shall not be requested or gathered on the adoption information sheet.

**History.** Acts 2009, No. 1399, § 1.

SUBCHAPTER 2 — REVISED UNIFORM ADOPTION ACT

SECTION.	SECTION.
9-9-201. Short title.	for relinquishing minor for adoption.
9-9-202. Definitions.	
9-9-203. Who may be adopted.	9-9-207. Persons as to whom consent not required.
9-9-204. Who may adopt.	
9-9-205. Jurisdiction — Venue — Inconvenient forum — Disclosure of name.	9-9-208. How consent is executed.
	9-9-209. Withdrawal of consent.
	9-9-210. Petition for adoption.
9-9-206. Persons required to consent to adoption — Consideration	9-9-211. Report of petitioner's expenditures.



## SECTION.

- 9-9-212. Hearing on petition — Requirements.
- 9-9-213. Required residence of minor.
- 9-9-214. Appearance — Continuance — Disposition of petition.
- 9-9-215. Effect of decree of adoption.
- 9-9-216. Appeal from and validation of adoption decree.
- 9-9-217. Confidentiality of hearings and records.
- 9-9-218. Recognition of foreign decrees affecting adoption.

## SECTION.

- 9-9-219. Application for new birth record.
- 9-9-220. Relinquishment and termination of parent and child relationship.
- 9-9-221. Uniformity of interpretation.
- 9-9-222. Repeal and effective date.
- 9-9-223. Termination of rights of nonparental relatives.
- 9-9-224. Child born to unmarried mother.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Publisher's Notes.** For comments regarding the Uniform Adoption Act, see Commentaries Volume B.

**Cross References.** Grandparent's visitation rights, § 9-13-103.

**Effective Dates.** Acts 1979, No. 599, § 6: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that technical and clerical errors were made in the 1977 Uniform Adoption Act and that it is immediately necessary to remedy such errors. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1986 (2nd Ex. Sess.), No. 23, § 5: May 19, 1986. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the repeal of Section 17 of Act 735 of 1977, formerly compiled as Arkansas Statute 56-217, was an error and that this Act is immediately necessary to insure that adoption proceedings and adoption records are confidential. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1995, No. 1284, § 6: became law without Governor's signature. Noted Apr. 14, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to adoption proceedings in the state of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1106, § 5: Apr. 3, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that national fingerprint-based criminal record checks are not necessary if a prospective adoptive parent has resided in their state of residence for six years. Additional national fingerprint-based criminal record checks are not needed with international adoptions as they are already part of INS regulations. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1227, § 19: Apr. 7, 1997. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that there is an important public interest in providing quality representation to juveniles and parents in dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is further determined that children are the state's most treasured future resource and recent studies indicate that children and their parents have not always received quality representation and sometimes have gone without representation in dependency-neglect proceedings in the past because the counties of Arkansas have been unable to provide adequate representation due to lack of funding and uniform application of the law. To insure the best interests of Arkansas' children in achieving a safe and permanent home, to comply with federal law mandating appointment of guardians ad litem in dependency-neglect cases, and to prevent the loss of federal funding, a statewide system for quality dependency-neglect representation must be established. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 650, § 9: Mar. 25, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that federal law only allows the Federal Bureau of Inves-

tigation to release criminal history records to certain entities, which does not include private entities as currently permitted under state law. The Department of Arkansas State Police entered into an agreement with the Federal Bureau of Investigation regarding federal fingerprint-based criminal record checks, which permits disclosure only as allowed by federal law, with a grace period from the Federal Bureau of Investigation to correct state law no later than May 1, 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 230, § 3: Feb. 25, 2009: Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is in the best interest of a child to be determined to be legally free for adoption without undue delay. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**Ark. L. Notes.** Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions: Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

**Ark. L. Rev.** Brummer and Looney, Grandparent Rights in Custody, Adoption, and Visitation Cases, 39 Ark. L. Rev. 259.

Case Note, Cox v. Whitten: Limiting the Inheritance Rights of Adopted Adults, etc., 40 Ark. L. Rev. 627.

Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

Note, Strict Construction, Jurisdictional Requirements and the Arkansas Adoption Code: Martin v. Martin and a Missed Chance for Clarity, 49 Ark. L. Rev. 123.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

Derden, Note: Family Law — Adoption



— Revised Uniform Adoption Act, 2 U. Ark. Little Rock L.J. 135.

Brantley and Effland, *Inheritance, The Share of the Surviving Spouse, and Wills: Arkansas Law and the Uniform Probate Code Compared*, 3 U. Ark. Little Rock L.J. 361.

Arkansas Law Survey, Waddell, *Family Law*, 7 U. Ark. Little Rock L.J. 229.

Arkansas Law Survey, Morgan, *Family Law*, 8 U. Ark. Little Rock L.J. 169.

Legislative Survey, *Family Law*, 8 U. Ark. Little Rock L.J. 577.

Arkansas Law Survey, Irving, *Family Law*, 9 U. Ark. Little Rock L.J. 173.

Survey—*Family Law*, 14 U. Ark. Little Rock L.J. 799.

Fifteenth Annual Survey of Arkansas Law, 15 U. Ark. Little Rock L.J. 427.

## CASE NOTES

### ANALYSIS

*In General.*

*Construction.*

*Agreements to Adopt.*

*Grandparents.*

*Joinder of State Agency.*

*Rehabilitative Services.*

*Residency Requirement.*

### **In General.**

Law in effect at time of adoption governs in determining validity of adoption. *Dean v. Brown*, 216 Ark. 761, 227 S.W.2d 623 (1950).

### **Construction.**

Statutory provisions involving the adoption of minors are strictly construed and applied. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

### **Agreements to Adopt.**

An oral agreement to adopt a child did not prevent the person making the agreement from disposing by will of all his property to other persons than the child agreed to be adopted. *Minetree v. Minetree*, 181 Ark. 111, 26 S.W.2d 101 (1930) (decision under prior law).

To prove a contract to adopt a person, the burden of proof rests with the person claiming the benefit of an alleged contract for adoption, to establish it by clear, cogent, and convincing evidence. *Thomas v. Costello*, 226 Ark. 669, 292 S.W.2d 267 (1956) (decision under prior law).

### **Grandparents.**

Where grandparents intervened in an adoption proceeding to show the best interests of their grandchildren, but did not seek to adopt them, it could not be argued

that the adoption statutes deprived them of their rights to the grandchildren without showing a compelling state interest or deprived them of due process. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981).

### **Joinder of State Agency.**

There is nothing in ARCP 19 or this subchapter which compels the joinder of the Division of Social Services (abolished — see § 25-10-101 et seq.) in all adoption proceedings. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981).

### **Rehabilitative Services.**

Any claim of a right to receive rehabilitative services must be made in the juvenile court dependency-neglect proceedings and not later in the probate court on a petition for adoption of the neglected children, since this subchapter, makes no provision for rehabilitative services. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981).

### **Residency Requirement.**

Probate courts are not empowered to grant an adoption when neither the adopting parents nor the child sought to be adopted are residents of Arkansas. *In re Pollock*, 293 Ark. 195, 736 S.W.2d 6 (1987).

**Cited:** *Poe v. Case*, 263 Ark. 488, 565 S.W.2d 612 (1978); *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980); *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982); *Webb v. Harvell*, 563 F. Supp. 172 (W.D. Ark. 1983); *Woodson v. Kilcrease*, 7 Ark. App. 252, 648 S.W.2d 72 (1983); *In re Proposed Local Rules*, 284 Ark. 133, 682 S.W.2d 452 (1984); *Summers v. Mylan*, 287 Ark. 150, 697 S.W.2d 91 (1985).

### 9-9-201. Short title.

This subchapter may be cited as the “Revised Uniform Adoption Act”.

**History.** Acts 1977, No. 735, § 1; A.S.A. 1947, § 56-201.

### RESEARCH REFERENCES

**Ark. L. Rev.** Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

### CASE NOTES

**Cited:** In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990); In re J.L.T., 31 Ark. App. 85, 788 S.W.2d 494 (1990); Sides v. Beene, 327 Ark. 401, 938 S.W.2d 840 (1997).

### 9-9-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Child” means a son or daughter, whether by birth or by adoption;

(2) “Court” means all probate divisions of circuit courts in this state, or the juvenile divisions of circuit courts when exercising jurisdiction over adoption cases pursuant to §§ 9-27-301 — 9-27-345 and, when the context requires, means the court of any other state empowered to grant petitions for adoption;

(3) “Minor” means an individual under the age of eighteen (18) years;

(4) “Adult” means any individual who is not a minor;

(5) “Agency” means any person certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption;

(6) “Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

(7) “Abandonment” means the failure of the parent to provide reasonable support and to maintain regular contact with the child through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the child without just cause for a period of one (1) year shall constitute a rebuttable presumption of abandonment;

(8) “Neglect” means the failure or refusal, including acts or omissions, of a person legally responsible for the care and maintenance of a child:

(a) To prevent the abuse of the child when the person legally responsible knows or has reasonable cause to know the child is or has been abused; or

(b) To provide the necessary food, clothing, shelter, and education required by law, or medical treatment necessary for the child’s well-being, which causes or threatens to cause the significant impairment of the child’s physical, mental, or emotional health, except when



the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected, or when the child is being furnished with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

(9) "Refusal to consent" means the unreasonable refusal to consent by a parent not having custody of a child to the termination of parental rights contrary to the best interest of the child;

(10) "Abuse" means any injury, sexual abuse, or sexual exploitation inflicted by a person upon a child other than by accidental means, or an injury which is at variance with the history given of it.

**History.** Acts 1977, No. 735, § 2; 1985, No. 879, § 1; A.S.A. 1947, § 56-202; Acts 1993, No. 758, § 2.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery

courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

## CASE NOTES

### Abandonment.

Record supported the circuit court's holding that a natural father's consent to the adoption of his minor child was not required under § 9-9-207 because he had failed significantly, without justifiable cause, to support the child for a period of

one year, and therefore had abandoned her per § 9-9-202(7). *Vick v. Cecil* (In re A.M.C.), 368 Ark. 369, 246 S.W.3d 426 (2007).

**Cited:** *King v. Lybrand*, 329 Ark. 163, 946 S.W.2d 946 (1997); *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004).

### 9-9-203. Who may be adopted.

Any individual may be adopted.

**History.** Acts 1977, No. 735, § 3; A.S.A. 1947, § 56-203.

### 9-9-204. Who may adopt.

The following individuals may adopt:

- (1) A husband and wife together although one (1) or both are minors;
- (2) An unmarried adult;
- (3) The unmarried father or mother of the individual to be adopted;
- (4) A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not his or her spouse; and if:

- (i) The other spouse is a parent of the individual to be adopted and consents to the adoption;
- (ii) The petitioner and the other spouse are legally separated; or
- (iii) The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged

unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

**History.** Acts 1977, No. 735, § 4; 1979, No. 599, § 1; A.S.A. 1947, § 56-204.

## CASE NOTES

### ANALYSIS

Adoption by Unmarried Father.  
Adoption by Unmarried Mother.  
Standing to Adopt.

#### Adoption by Unmarried Father.

Trial court erred in its interpretation of this section because a child's biological father could adopt the child, despite the fact that the father was unmarried. Also, the trial court's policy concern that the adoption would relieve the mother, who had consented to the adoption, of her obligation to financially support the child was a matter that was more appropriately addressed by the legislature. *King v. Ochoa*, 373 Ark. 600, 285 S.W.3d 602 (2008).

#### Adoption by Unmarried Mother.

Circuit court did not err in denying the adoption petition, because it was the mother's burden to present credible evidence to convince the circuit judge that adoption was in the best interest of the child, and considering the circuit court's determination that the effect of § 9-9-215 was speculative and that the mother's allegations against the father could be

afforded no weight, she failed to meet this burden. There was no corroborating testimony or evidence as to the mother's allegations regarding the father's use of alcohol and drugs or the father's abuse of his children, other than what the mother told her mother. In re Adoption of M.K.C., — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 257 (Mar. 5, 2009).

#### Standing to Adopt.

Section 9-9-210(a)(3) provides that a petition for adoption shall state "the date the petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how petitioner acquired custody of the minor." That language, having to do with the contents of the petition, does not mean that a person who does not have custody and with whom the child has not been "placed" has no standing; standing to adopt is conferred by this section, and this section does not exclude persons who have served as foster parents of the minor to be adopted. *Patterson v. Robbins*, 295 Ark. 511, 749 S.W.2d 330 (1988).

**Cited:** *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985); In re Perkins/Pollnow, 300 Ark. 390, 779 S.W.2d 531 (1989).

## 9-9-205. Jurisdiction — Venue — Inconvenient forum — Disclosure of name.

(a) Jurisdiction of adoption of minors:

(1) The state shall possess jurisdiction over the adoption of a minor if the person seeking to adopt the child, or the child, is a resident of this state.

(2) For purposes of this subchapter:

(A) A child under the age of six (6) months shall be considered a resident of this state if the:

(i) Child's birth mother resided in Arkansas for more than four (4) months immediately preceding the birth of the child;

(ii) Child was born in this state or in any border city that adjoins the Arkansas state line or is separated only by a navigable river from an Arkansas city that adjoins the Arkansas state line; and

(iii) Child remains in this state until the interlocutory decree has been entered, or in the case of a nonresident adoptive family, upon the receipt of approval pursuant to the Interstate Compact on the Placement of Children, § 9-29-201 et seq.; the child and the prospective adoptive parents may go back to their state of residence and subsequently may return to Arkansas for a hearing on the petition for adoption;

(B) A child over the age of six (6) months shall be considered a resident of this state if the child:

- (i) Has resided in this state for a period of six (6) months;
- (ii) Currently resides in Arkansas; and
- (iii) Is present in this state at the time the petition for adoption is filed and heard by a court having appropriate jurisdiction; and

(C) A person seeking to adopt is a resident of this state if the person:

- (i) Occupies a dwelling within the state;
- (ii) Has a present intent to remain within the state for a period of time; and
- (iii) Manifests the genuineness of that intent by establishing an ongoing physical presence within the state together with indications that the person's presence within the state is something other than merely transitory in nature.

(3)(A) If the juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the adoption petition shall be filed in that case.

(B) The circuit court shall retain jurisdiction to issue orders of adoption, interlocutory or final, when a juvenile is placed outside the State of Arkansas.

(b) Jurisdiction of adoption of adults: Physical presence of the petitioner or petitioners or the individual to be adopted shall be sufficient to confer subject matter jurisdiction.

(c) Venue:

(1) Proceedings for adoption must be brought in the county in which, at the time of filing or granting the petition, the petitioner or petitioners, or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located;

(2) If the court finds in the interest of substantial justice that the matter should be heard in another forum, the court may transfer, stay, or dismiss the proceedings in whole or in part on any conditions that are just.

(d) The caption of a petition for adoption shall be styled substantially "In the matter of the Adoption..." The person to be adopted shall be designated in the caption under the name by which he or she is to be known if the petition is granted.

(e) If the child is placed for adoption, any name by which the child was previously known may be disclosed in the petition, the notice of hearing, or in the decree of adoption.



(f) In the event the child dies during the time that the child is placed in the home of an adoptive parent or parents for the purpose of adoption, the court has the authority to enter a final decree of adoption after the child's death upon the request of the adoptive parent.

**History.** Acts 1977, No. 735, § 5; A.S.A. 1947, § 56-205; Acts 1991, No. 658, § 1; 2001, No. 383, § 1; 2001, No. 1029, § 1; 2003, No. 650, §§ 1, 8; 2007, No. 539, §§ 1, 2.

**Publisher's Notes.** Acts 1991, No. 658, § 2 provided that the 1991 amendment to this section shall not apply retrospectively

but only to adoption petitions filed after July 15, 1991.

**Amendments.** The 2007 amendment, in (e), deleted "by an agency" following "for adoption" and substituted "may" for "shall not"; and added (f).

**Cross References.** Jurisdiction of courts, § 28-65-107.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, In re Adoption of Pollock: Arkansas Probate Court Jurisdiction — A Question of Policy, 41 Ark. L. Rev. 677.

**U. Ark. Little Rock L.J.** Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

## CASE NOTES

### ANALYSIS

Jurisdiction.  
Residence.

### Jurisdiction.

The General Assembly, in enacting subsection (a) of this section, has assured this state has a genuine interest or contact with at least one of the parties (adoptive parents, adopted child, or local agency that has care and control of the child) involved before an adoption matter is filed or granted within its borders. Restricting the state's jurisdiction to such instances, the General Assembly has placed our courts in a position to better ensure that the adopted child's best interests are achieved. In re Pollock, 293 Ark. 195, 736 S.W.2d 6 (1987).

Failure to comply strictly with the Adoption Code denies the probate court jurisdiction, and unless all jurisdictional requirements appear in the record, the resulting decree will be void on collateral attack. Swaffar v. Swaffar, 309 Ark. 73, 827 S.W.2d 140 (1992).

Granting of mother's, brother's, and wife's petition for adoption was inappropriate as Arkansas did not have jurisdiction; the brother and his wife were not

residents of Arkansas and the child was not a resident of the state, only the child's guardian was. Roberts v. Westover, 368 Ark. 288, 245 S.W.3d 119 (2006).

### Residence.

The jurisdiction of the probate court to grant a petition for the adoption of an infant did not depend on evidence that the residence of the father was unknown nor on the recital thereof in the record. Taylor v. Collins, 172 Ark. 541, 289 S.W. 466 (1927) (decision under prior law).

Probate court, which had jurisdiction to enter original order of adoption, had a right to correct the order originally made so as to show jurisdictional fact of residence. Newell v. Black, 201 Ark. 937, 147 S.W.2d 991 (1941) (decision under prior law).

Adoption order was fatally defective where neither the petition nor the order recited that the prospective adoptive parent nor the minors sought to be adopted were residents of the county. Ozment v. Mann, 235 Ark. 901, 363 S.W.2d 129 (1962) (decision under prior law).

This section poses no permanent residency or domicile requirement. In re Adoption of Samant, 333 Ark. 471, 970 S.W.2d 249 (1998).



**9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.**

(a) Unless consent is not required under § 9-9-207, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

(1) The mother of the minor;

(2) The father of the minor if the father was married to the mother at the time the minor was conceived or at any time thereafter, the minor is his child by adoption, he has physical custody of the minor at the time the petition is filed, he has a written order granting him legal custody of the minor at the time the petition for adoption is filed, a court has adjudicated him to be the legal father prior to the time the petition for adoption is filed, or he proves a significant custodial, personal, or financial relationship existed with the minor before the petition for adoption is filed;

(3) Any person lawfully entitled to custody of the minor or empowered to consent;

(4) The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5) The minor, if more than ten (10) years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and

(6) The spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

(c) Under no circumstances may a parent or guardian of a minor receive a fee, compensation, or any other thing of value as a consideration for the relinquishment of a minor for adoption. However, incidental costs for prenatal, delivery, and postnatal care may be assessed, including reasonable housing costs, food, clothing, general maintenance, and medical expenses, if they are reimbursements for expenses incurred or fees for services rendered. Any parent or guardian who unlawfully accepts compensation or any other thing of value as a consideration for the relinquishment of a minor shall be guilty of a Class C felony.

**History.** Acts 1977, No. 735, § 6; 1979, No. 599, § 2; 1985, No. 467, § 1; A.S.A. 1947, § 56-206; Acts 2005, No. 437, § 1; 2007, No. 539, § 3.

**Amendments.** The 2005 amendment substituted "he has a written order ... petition for adoption is filed" for "or he has otherwise legitimated the minor accord-

ing to the laws of the place in which the adoption proceeding is brought" in (a)(2).

The 2007 amendment, in (a)(2), inserted "physical" and "a court has adjudicated him to be the legal father prior to the time the petition for adoption is filed."

## RESEARCH REFERENCES

**Ark. L. Rev.** Recent Developments, Domestic Relations — Adoption, 57 Ark. L. Rev. 697.

Note, The Confusion and Clarification of Arkansas's Adoption Consent Law: In re the Adoption of SCD, a Minor, and the Arkansas General Assembly's Response, 58 Ark. L. Rev. 735.

**U. Ark. Little Rock L.J.** Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 207.

Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

**U. Ark. Little Rock L. Rev.** Note: Family Law-Putative Fathers and the Presumption of Legitimacy-Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights of Putative Fathers in Arkansas, 25 U. Ark. Little Rock L. Rev. 369.

## CASE NOTES

## ANALYSIS

Constitutionality.

In General.

Construction.

Application.

Grandparents.

Minors.

Parents.

—In General.

—Father.

—Mother.

Refusal to Consent.

Validity of Consent.

**Constitutionality.**

A putative father had no standing to question the constitutionality of this section, since it was not applied to him in a discriminatory manner. *Wineman v. Brewer*, 280 Ark. 527, 660 S.W.2d 655 (1983).

**In General.**

Consent can be given either by (1) any person lawfully entitled to custody of the minor or (2) any person lawfully empowered to consent to his adoption; that person clearly need not be both lawfully entitled to custody and lawfully empowered to consent. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Trial court dismissed an adoption petition filed by mother and prospective adoptive parents due to a lack of consent by biological father after the trial court learned that the father had registered as the baby's father under the Arkansas Putative Father Registry and had legitimated the baby as provided in subdivision (a)(2) of this section. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

**Construction.**

Statutory provisions involving the adoption of minors are strictly construed and applied. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

**Application.**

Subdivision (a)(5) of this section did not apply to termination of parental rights proceedings in dependency-neglect cases, because the statute required a minor of a certain age to consent to a particular adoption, and it was therefore utilized only where the circuit court was considering a specific petition for the adoption of a child; a consent to adoption was not a necessary element of proof when a court was considering the termination of parental rights. *Childress v. Ark. Dep't of Human Servs.*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 453 (Apr. 22, 2009).

**Grandparents.**

Custodial grandparents were not required to consent to the adoption of the grandchildren, but were permitted to intervene in the adoption proceedings for the limited purpose of offering evidence on the best interests of the grandchildren. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981).

Where the biological mother gave consent to the adoptive mother to adopt her daughter, consent was not required by the maternal grandparents before the adoption could proceed. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

**Minors.**

A consenting minor's age may vary from ten up to 18 and the trial judge has the authority to attach more weight to the



decision of a minor almost of full age than to that of a ten-year-old. *Brown v. Meekins*, 282 Ark. 186, 666 S.W.2d 710 (1984).

Consent of minor held unnecessary. *Brown v. Meekins*, 282 Ark. 186, 666 S.W.2d 710 (1984).

Absence of the consent of a minor whose consent is required is not a mere technicality, in that public policy clearly favors the consent of the person to be adopted, and the consent of the one to be adopted, as required by statute, must not be presumed. *Swaffar v. Swaffar*, 309 Ark. 73, 827 S.W.2d 140 (1992).

### **Parents.**

Adoption decree in favor of the mother and the adoptive father was proper because the biological father voluntarily, willfully, arbitrarily, and without adequate excuse failed to pay child support in excess of one year as set forth under § 9-9-207(a)(2). Therefore, his consent to the adoption was unnecessary, per subdivision (a)(2) of this section. *Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).

### **—In General.**

In order to grant an adoption contrary to the wishes of a natural parent, the conditions prescribed by statute must be clearly proven and the statute construed in favor of the natural parent. *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985).

Consent of parent held necessary. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

### **—Father.**

The courts may grant a petition for adoption regardless of the arbitrary dissent by a natural father. *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

Unmarried father lacking any substantial relationship with his child is not entitled to notice of the child's adoption proceeding under either the due process clause or the equal protection clause of U.S., Const. Amend. 14. In re *S.J.B.*, 294 Ark. 598, 745 S.W.2d 606 (1988); In re *J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990).

As one means of protecting the right of natural parents with respect to the care, custody, management and companionship of their minor children a natural father

who has legitimated a child has the privilege of consenting to an adoption, unless it is found that his consent is excused. In re *B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

Although the natural father had filed an answer to a petition for adoption of the child by a stepfather and had declined to offer his consent to the adoption, where he did not appear at the hearing and had not himself pursued an appeal of the probate judge's decision granting the adoption, the natural father did not have standing on appeal to question the probate judge's decision on the issue. In re *B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

In vacating an adoption decree, the trial court never made a determination of whether the natural father qualified as a father whose consent was required under subdivision (a)(2) of this section, so the matter was remanded to the trial court for an analysis of the evidence on that issue; the father's consent was not required under (a)(3) of this section if it was determined that it was not required under this section. *Britton v. Gault*, 80 Ark. App. 311, 94 S.W.3d 926 (2003).

Where a DNA test showed the putative father was the child's biological father but he did not timely register with the putative-father registry, his consent to the adoption was not required because he had not "otherwise legitimated" the child; the father had taken no significant steps to prepare for having the baby with him if he was awarded custody. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

### **—Mother.**

Trial court without jurisdiction in adoption to proceed without the mother's consent. *Roberts v. Swim*, 268 Ark. 917, 597 S.W.2d 840 (Ct. App. 1980).

### **Refusal to Consent.**

Before an order of adoption can be held binding against a nonconsenting parent, the court rendering it must have jurisdiction of both the subject matter and the person, and the record must show upon its face that the case is one where the court has authority to act. *Hughnes v. Cain*, 210 Ark. 476, 196 S.W.2d 758 (1946) (decision under prior law).

Because father legitimated the child by filing with the putative father registry, initiating a petition to determine pater-

nity, and taking other actions to establish his parentage, the trial court correctly ruled that the father's consent was required before the adoption could occur; because the father did not consent to the adoption, the trial court correctly denied the adoptive parents' petition for adoption. *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004).

Where the adoptive parent left the child who suffered from an incurable skin condition alone in a motor home unattended by an adult, the trial court did not err in finding that the guardian was not unreasonably withholding her consent to the adoption of the child under subdivision (a)(3) of this section. The trial court focused on the special medical needs of the child, including her epidermolysis bullosa condition, seizures, and episodes of holding her breath and passing out. *Tom v.*

*Cox*, 101 Ark. App. 388, 278 S.W.3d 110 (2008).

#### **Validity of Consent.**

Consent found to be valid. *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955) (decision under prior law).

Substantial compliance with statutory requirements found for consent to adoption. *A & B v. C & D*, 239 Ark. 406, 390 S.W.2d 116 (1965), cert. denied, 382 U.S. 926, 86 S. Ct. 314, 15 L. Ed. 2d 340 (1965) (decision under prior law).

**Cited:** *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980); *Tisdale v. Seavey*, 286 Ark. 222, 691 S.W.2d 144 (1985); *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986); *Belcher v. Bowling*, 22 Ark. App. 248, 738 S.W.2d 804 (1987); *Manuel v. McCorkle*, 24 Ark. App. 92, 749 S.W.2d 341 (1988); *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

### **9-9-207. Persons as to whom consent not required.**

(a) Consent to adoption is not required of:

(1) a parent who has deserted a child without affording means of identification or who has abandoned a child;

(2) a parent of a child in the custody of another, if the parent for a period of at least one (1) year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree;

(3) the father of a minor if the father's consent is not required by § 9-9-206(a)(2);

(4) a parent who has relinquished his or her right to consent under § 9-9-220;

(5) a parent whose parental rights have been terminated by order of court under § 9-9-220 or § 9-27-341;

(6) a parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;

(7) any parent of the individual to be adopted, if the individual is an adult;

(8) any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably;

(9) the spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent;

(10) a putative father of a minor who signed an acknowledgement of paternity but who failed to establish a significant custodial, personal, or



financial relationship with the juvenile prior to the time the petition for adoption is filed; or

(11) a putative father of a minor who is listed on the Putative Father Registry but who failed to establish a significant custodial, personal, or financial relationship with the juvenile prior to the time the petition for adoption is filed.

(b) Except as provided in §§ 9-9-212 and 9-9-224, notice of a hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

**History.** Acts 1977, No. 735, § 7; 1977 (1st Ex. Sess.), No. 22, §§ 1, 2; A.S.A. 1947, § 56-207; Acts 1989, No. 496, § 8; 2003, No. 650, § 2; 2005, No. 437, § 2.

**Amendments.** The 2005 amendment added (a)(10) and (a)(11) and made related changes.

## RESEARCH REFERENCES

**Ark. L. Notes.** Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions: Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

**Ark. L. Rev. Note,** The Confusion and Clarification of Arkansas's Adoption Consent Law: In re the Adoption of SCD, a Minor, and the Arkansas General Assembly's Response, 58 Ark. L. Rev. 735.

**U. Ark. Little Rock L.J.** Shively, Sur-

vey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 207.

Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

## CASE NOTES

### ANALYSIS

Constitutionality.

Construction.

Abandonment.

Best Interest of Child.

Custody of Another.

Evidence.

Failure to Communicate or Support.

—In General.

—Sufficient Communication.

—Support.

—Time Period.

Guardian.

Notice.

Proof.

Unreasonable Withholding of Consent.

### Constitutionality.

A putative father had no standing to question the constitutionality of this section, since it was not applied to him in a discriminatory manner. *Wineman v.*

*Brewer*, 280 Ark. 527, 660 S.W.2d 655 (1983).

### Construction.

This section should be strictly construed and applied. *Roberts v. Swim*, 268 Ark. 917, 597 S.W.2d 840 (Ct. App. 1980); *Dodson v. Donaldson*, 10 Ark. App. 64, 661 S.W.2d 425 (1983); *Brown v. Johnson*, 10 Ark. App. 110, 661 S.W.2d 443 (1983); *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

### Abandonment.

Abandonment of child by father held not to have been established. *Woodson v. Lee*, 221 Ark. 517, 254 S.W.2d 326 (1953); *Walthall v. Hime*, 236 Ark. 689, 368 S.W.2d 77 (1963) (preceding cases decided under prior law); *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Father's indifference to his children's welfare was tantamount to voluntary abandonment, so that his consent was not

needed to the children's adoption by his former wife's second husband. *Zgleszewski v. Zgleszewski*, 260 Ark. 629, 542 S.W.2d 765 (1976) (decision under prior law).

Abandonment, in the sense of the adoption statutes, means conduct which evinces a settled purpose to forego all parental duties. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Where the natural mother and her new husband proved by clear and convincing evidence that the natural father failed significantly and without justifiable cause to provide for the care and support of the child, the natural father's consent to the adoption was not required. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Where the father was not precluded from making his support payments, there was no evidence that the father was financially unable to meet his obligation, and the record clearly reflected that the father voluntarily chose not to pay the support, the father's action in failing to pay support was an arbitrary act without just cause or adequate excuse, whether or not the mother interfered with his ability to observe visitation with the child. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Consent for adoption was not required where father's denial of paternity, when child support was sought in prior years, could be considered abandonment. *King v. Lybrand*, 329 Ark. 163, 946 S.W.2d 946 (1997).

Record supported the circuit court's holding that the natural father's consent to the adoption of his minor child was not required under this section because he had failed significantly, without justifiable cause, to support the child for a period of one year, and therefore had abandoned her per subdivision (7) of this section. *Vick v. Cecil* (In re A.M.C.), 368 Ark. 369, 246 S.W.3d 426 (2007).

### **Best Interest of Child.**

The fact that, under certain circumstances, the father's consent is necessary, does not require that the adoption be granted. The court must find that the adoption is in the best interest of the child. *McKee v. Bates*, 10 Ark. App. 51, 661 S.W.2d 415 (1983); *Shemley v. Montezuma*, 12 Ark. App. 337, 676 S.W.2d 759 (1984).

The mere fact that a parent has forfeited his right to have his consent to an adoption required does not mean that the adoption must be granted. The court must further find from clear and convincing evidence that the adoption is in the best interest of the child. *Waldrup v. Davis*, 40 Ark. App. 25, 842 S.W.2d 49 (1992).

Where the court's finding was that step-parent adoption was not in children's best interest, the adoption was properly denied. *Waldrup v. Davis*, 40 Ark. App. 25, 842 S.W.2d 49 (1992).

A probate court may grant a petition for adoption if it determines at the conclusion of a hearing that the required consents have been obtained or excused and that the adoption is in the best interest of the child or individual to be adopted. In re B.A.B., 40 Ark. App. 86, 842 S.W.2d 68 (1992).

In adoption proceedings in which the circuit court determined that the natural father's consent was not necessary, the court's findings to support the determination that allowing a minor child's stepfather to adopt her and severing the child's relationship with her natural father served the child's best interests were not clearly against the preponderance of the evidence since (1) the child had a good relationship with her stepfather, (2) prior to seeing the child in 2005, the natural father had not seen her since 2002, had a number of felony convictions, had missed child support payments, was unemployed, and lived with his mother, and (3) the natural mother and stepfather were morally fit to have the custody of the child, were physically and financially able to furnish suitable support, nurture, and education for the child, and wanted to establish a parent-child relationship with the child. *Vick v. Cecil* (In re A.M.C.), 368 Ark. 369, 246 S.W.3d 426 (2007).

### **Custody of Another.**

Adopting couple held to have custody of child lawfully, despite lack of valid court order awarding custody. *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983).

### **Evidence.**

Evidence held insufficient to support trial court's granting the petition to adopt. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).



**Failure to Communicate or Support.**

In an appeal from a circuit court's determination that a stepfather could adopt his stepchild without the consent of the child's biological father, the father's claim that his lack of support and contact with his child was justified based upon medical problems and drug abuse failed because, even after the adoption petition was filed, the father made no attempt to see his child, and by that time, the father had ceased using illegal drugs. *Roberts v. Brown*, 103 Ark. App. 1, 285 S.W.3d 716 (2008).

Adoption decree in favor of the mother and the adoptive father was appropriate because the biological father voluntarily, willfully, arbitrarily, and without adequate excuse failed to pay child support in excess of one year as set forth under subdivision (a)(2) of this section. Therefore, his consent to the adoption was unnecessary. *Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).

**—In General.**

"Failed significantly" in this section does not mean failed totally but the failure must be a significant one as contrasted with an insignificant one; it denotes a failure that is meaningful or important. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979); *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980); *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983).

In order to adopt a child without the necessity of parental consent, the conduct of a parent who has failed significantly without justifiable cause to communicate with his child or to provide for the care and support of his child as required by law or judicial decree, must be willful in the sense of being voluntary and intentional; it must appear that the parent acted arbitrarily and without just cause or adequate excuse. *Roberts v. Swim*, 268 Ark. 917, 597 S.W.2d 840 (Ct. App. 1980); *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

Parent's consent held unnecessary due to significant, unjustifiable failure to communicate with or support child. *Henson v. Money*, 273 Ark. 203, 617 S.W.2d 367 (1981); *Loveless v. May*, 278 Ark. 127, 644 S.W.2d 261 (1983); *Dodson v. Donaldson*, 10 Ark. App. 64, 661 S.W.2d 425 (1983);

*Brown v. Johnson*, 10 Ark. App. 110, 661 S.W.2d 443 (1983); *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983); *In re Titsworth*, 11 Ark. App. 197, 669 S.W.2d 8 (1984); *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Justifiable cause means that the significant failure must be willful in the sense of being voluntary and intentional; it must appear that the parent acted arbitrarily and without just cause or adequate excuse. *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983).

Consent of the natural father to adoption of his children by their natural mother and her second husband held not to be waived. *Tisdale v. Seavey*, 286 Ark. 222, 691 S.W.2d 144 (1985).

The term "failed significantly without justifiable cause" does not mean that the parent must have failed totally but denotes a failure that is meaningful, important, and willful. *Manuel v. McCorkle*, 24 Ark. App. 92, 749 S.W.2d 341 (1988).

Father's failure to communicate with his child was unjustified in spite of his claim that the lack of contact was not meaningful because of the child's young age and that he failed to visit because the mother and her new husband did not permit visitation; evidence showed that the father placed only 6 short telephone calls to the mother over a period of more than a year, and while he claimed to have written one letter to the mother it was never received; moreover the mother and her new husband asserted that they did not prevent visitation. *Vier v. Vier*, 62 Ark. App. 89, 968 S.W.2d 657 (1998).

The natural father's consent was not required where (1) the father admitted that he had no physical contact with the child for more than two years and that he did not pay court-ordered child support for almost two years, (2) he did not attempt to utilize the help of a court to enforce his visitation rights until approximately two and a half years after he learned of the first entry of adoption, and (3) he attempted to justify his failure to pay the court-ordered child support on financial trouble, including a bankruptcy, and credit-card debt. *Reid v. Frazee*, 72 Ark. App. 474, 41 S.W.3d 397 (2001).

Where father had not communicated with his children for over 12 years, the failure to communicate was not justifiable because sexual abuse allegations against

the father did not prevent him from making phone calls or writing letters; thus, the step-father did not need the father's consent to adopt. *McClelland v. Murray*, 92 Ark. App. 301, 213 S.W.3d 33 (2005).

Trial court erred in granting a petition by step-mother to adopt her step-daughter without the mother's consent as the step-mother and father refused the mother's requests for contact with the child and the mother's gifts for the child; thus, there was not clear and convincing evidence that the mother's failure to provide for the care and support was "without justification." *Neel v. Harrison*, 93 Ark. App. 424, 220 S.W.3d 251 (2005).

#### —Sufficient Communication.

Parent held to have failed to significantly communicate with child. *Brown v. Fleming*, 266 Ark. 814, 586 S.W.2d 8 (Ct. App. 1979); *Belcher v. Bowling*, 22 Ark. App. 248, 738 S.W.2d 804 (1987).

Evidence supported finding that parent had not failed significantly to communicate with child. *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986).

A letter written by the biological mother to the appointed friend of the court, requesting visitation of her children, and a progress report sent from the custodial parents to her concerning the children did not qualify as communication with the children. *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Natural mother's consent to stepmother's adoption was required where mother's efforts to communicate with children had been frustrated by father changing his telephone and pager numbers and not furnishing them to mother and otherwise refusing to facilitate her contact with the children. *Cassat v. Hennis*, 74 Ark. App. 226, 45 S.W.3d 866 (2001).

#### —Support.

The parent must furnish the support and maintenance himself and the duty is a personal one, and he may not rely upon assurance that someone else is properly supporting and maintaining the child to avoid the impact of subdivision (a)(2) of this section. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Evidence was insufficient to prove that father had unjustifiably failed to support child. *Chrisos v. Egleston*, 7 Ark. App. 82, 644 S.W.2d 326 (1983).

Evidence held to support finding that natural parent had not failed significantly and without justifiable cause to contribute to child's support. *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986).

A parent has the obligation to support a minor child, and no request for support is necessary. *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983).

Evidence sufficient to support finding that parent failed to support child. *Belcher v. Bowling*, 22 Ark. App. 248, 738 S.W.2d 804 (1987).

#### —Time Period.

The one-year period specified in this section need not be the year immediately preceding the judgment of adoption, since it means any one-year period. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979); *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Resumption of payment of support for a brief period, after the required period of one year, is not sufficient to bar an adoption without the consent of the delinquent father by starting a new one-year period of nonsupport under the statute. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

The filing of a petition for adoption establishes the cutoff date for dispensing with the natural parent's consent where the parent has failed to communicate with the child and provide support for one year. *Dixon v. Dixon*, 286 Ark. 128, 689 S.W.2d 556 (1985); *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

One-year period, after which a parent may lose his right to consent to his child's adoption if he does not communicate with or support his child, must accrue before the adoption petition is filed. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

The party seeking to adopt a child without the consent of a natural parent must prove by clear and convincing evidence that the failure to support the child not only continued for at least one year but also that it was willful, intentional, and without justifiable cause. Because one should not be permitted to assert a right until the facts on which it is predicated have accrued, the one-year period after which the parent may lose his right to consent to the adoption must accrue be-



fore the petition for adoption is filed. *Manuel v. McCorkle*, 24 Ark. App. 92, 749 S.W.2d 341 (1988); *In re Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

There was no error in the application of this state's law pertaining to the one-year period specified in this section, to circumstances occurring prior to the transfer of jurisdiction to the state, from a state where the time period was two years, instead of one year. *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

### **Guardian.**

Where guardian consented, the consent of the child's natural parents was unnecessary. *Richards v. Nesbitt*, 237 Ark. 888, 377 S.W.2d 40 (1964) (decision under prior law).

The law does not require a written request for consent of legal guardian. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

### **Notice.**

Under this subchapter, if consent to the adoption has been given, notice to the consenting party is not required, nor is any further participation required of them; consequently, where mother consented to adoption, she was not entitled to subsequent service of process preceding the adoption nor was a guardian ad litem required to be appointed to represent her. *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982).

Unmarried father lacking any substantial relationship with his child is not entitled to notice of the child's adoption proceeding under either the due process clause or the equal protection clause of U.S. Const., Amend. 14. *In re S.J.B.*, 294 Ark. 598, 745 S.W.2d 606 (1988); *In re J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990).

Where the maternal grandparents' daughter was alive and had given consent to the adoption of her child, no consent was required by the maternal grandparents nor was notice required to be given to them before the adoption could proceed. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

### **Proof.**

In an adoption proceeding contested by a natural parent the facts justifying the adoption must be established by clear and

convincing evidence. *Harper v. Caskin*, 265 Ark. 558, 580 S.W.2d 176 (1979); *McKee v. Bates*, 10 Ark. App. 51, 661 S.W.2d 415 (1983).

Party seeking to adopt must prove by clear and convincing evidence that the nonconsenting parent has failed significantly without justifiable cause either to communicate with or to provide for the care and support of the child for the statutory period. *Chrisos v. Egleston*, 7 Ark. App. 82, 644 S.W.2d 326 (1983); *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *Dodson v. Donaldson*, 10 Ark. App. 64, 661 S.W.2d 425 (1983); *Brown v. Johnson*, 10 Ark. App. 110, 661 S.W.2d 443 (1983); *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983); *In re Titsworth*, 11 Ark. App. 197, 669 S.W.2d 8 (1984).

When proving that a natural parent's consent is not required, the parties seeking to adopt bear the heavy burden of proving by clear and convincing evidence facts which justify dispensing with the required consent of the natural parents. *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986).

The party seeking to adopt a child without the consent of a natural parent must prove by clear and convincing evidence that the parent has failed significantly or without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Heavy burden is upon party seeking to adopt a child without consent of a natural parent to prove the failure to communicate or the failure to support by clear and convincing evidence. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987); *In re B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

In vacating an adoption decree, the trial court never made a determination of whether the natural father qualified as a father whose consent was required under § 9-9-206(a)(2), so the matter was remanded to the trial court for an analysis of the evidence on that issue; the father's consent was not required under subdivision (a)(3) of this section if it was determined that it was not required under § 9-9-206(a)(2). *Britton v. Gault*, 80 Ark. App. 311, 94 S.W.3d 926 (2003).

**Unreasonable Withholding of Consent.**

The courts may grant a petition for adoption to petitioners regardless of the arbitrary dissent by a natural father. *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

Although a father had failed significantly for a period of one year to support his child without justifiable cause, that fact did not preclude him from objecting to a proposed adoption or from being fully heard in the matter, rather it meant that he could not defeat the adoption by simply withholding his consent. *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

This section gives the probate court authority to decide the issue raised by the foster parents whether the Department of Human Services, as legal guardian of the minor, has unreasonably withheld its consent to adopt. The foster parents' rights in that respect are not subject exclusively to the department's policies, the Arkansas

Administrative Procedure Act (§ 25-15-201 et seq.), and circuit court review. *Patterson v. Robbins*, 295 Ark. 511, 749 S.W.2d 330 (1988).

Where the adoptive parent left the child who suffered from an incurable skin condition alone in a motor home unattended by an adult, the trial court did not err in finding that the guardian was not unreasonably withholding her consent to the adoption of the child under subdivision (a)(8) of this section. The trial court focused on the special medical needs of the child, including her epidermolysis bullosa condition, seizures, and episodes of holding her breath and passing out. *Tom v. Cox*, 101 Ark. App. 388, 278 S.W.3d 110 (2008).

**Cited:** *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992); *In re D.J.M.*, 39 Ark. App. 116, 839 S.W.2d 535 (1992); *Reid v. Frazee*, 61 Ark. App. 216, 966 S.W.2d 272 (1998); *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004).

**9-9-208. How consent is executed.**

(a) The required consent to adoption shall be executed at any time after the birth of the child and in the manner following:

- (1) If by the individual to be adopted, in the presence of the court;
- (2) If by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgments;
- (3) If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments;
- (4) If by a court, by appropriate order or certificate.

(b) A consent which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

(c) If the parent is a minor, the writing shall be signed by a court-ordered guardian ad litem, who has been appointed by a judge of a court of record in this state to appear on behalf of the minor parent for the purpose of executing consent. The signing shall be made in the presence of an authorized representative of the Arkansas licensed placement agency taking custody of the child, or in the presence of a notary public, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed.



**History.** Acts 1977, No. 735, § 8; A.S.A. 1947, § 56-208; Acts 1991, No. 774, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Survey — Family Law, 13 U. Ark. Little Rock L.J. 369.  
Family Law, 11 U. Ark. Little Rock L.J. 215.

## CASE NOTES

### ANALYSIS

Construction.  
Visitation Agreement.

### Construction.

This section and § 9-9-220 are mutually exclusive, in that they address separate methods by which a child may be adopted and provide different means by which the relinquishment of consent or direct consent may be withdrawn. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

This section and § 9-9-209 are mutually exclusive from § 9-9-220 in obtaining the relinquishment of consent or consent to an adoption, and either one or the other should be employed based on the applicable circumstances of the adoption; and the use of both relinquishment of parental rights and consent provisions in the affidavit and consent of natural mother document was in contravention of these sections. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Where both relinquishment of parental

rights and consent provisions were contained in the same document purporting to sanction the adoption of a minor child and the trial court included the ten day right to withdraw provision in its decree of adoption, the document was, in the main, a relinquishment of parental rights as embodied in § 9-9-220, and natural mother's revocation of her relinquishment five days after she signed the affidavit was effective. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Local rule imposed by chancellor blending the different statutory consent requirements of this section and § 9-9-220 was inappropriate. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

### Visitation Agreement.

An agreement to provide for visitation rights for a member of the natural parent's family as a basis for natural father's consent to an adoption in the absence of statute is against public policy and void and unenforceable. Poe v. Case, 263 Ark. 488, 565 S.W.2d 612 (1978).

**Cited:** Brown v. Meekins, 282 Ark. 186, 666 S.W.2d 710 (1984).

## 9-9-209. Withdrawal of consent.

(a) A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

(b)(1) A consent to adopt may be withdrawn within ten (10) calendar days, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, five (5) calendar days after it is signed or the child is born, whichever is later, by filing an affidavit with the probate division clerk of the circuit court in the county designated by the consent as the county in which the guardianship petition will be filed, if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship. If the ten-day period, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period ends on a weekend or a legal holiday, the person may file the affidavit the next working day. No fee shall be charged for the filing of the affidavit. The court may waive the ten-day period for filing a



withdrawal of consent for agencies as defined by § 9-9-202(5), minors over ten (10) years of age who consented to the adoption, or biological parents if a stepparent is adopting.

(2) The consent shall state that the person has the right of withdrawal of consent and shall provide the address of the probate division clerk of the circuit court of the county in which the guardianship will be filed, if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship.

(3) The consent shall state that the person may waive the ten-day period for the withdrawal of consent for an adoption and elect to limit the maximum time for the withdrawal of consent for an adoption to five (5) days.

**History.** Acts 1977, No. 735, § 9; A.S.A. 1947, § 56-209; Acts 1991, No. 774, § 2; 1995, No. 1284, § 1; 2003, No. 1185, § 7; 2005, No. 437, § 3; 2009, No. 230, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**Amendments.** The 2005 amendment,

in the last sentence of (b)(1), inserted "court may waive the" and "minors over ten (10) years of age who consented to the adoption, or biological parents if a stepparent is adopting" and substituted "consent for" for "consent shall not apply to."

The 2009 amendment, in (b), in (b)(3) inserted "or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, five (5) calendar days" and "or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period," inserted "division" in (b)(2), and added (b)(3).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

## CASE NOTES

### ANALYSIS

Construction.

Final Decree.

Interlocutory Order.

Withdrawal Prior to Filing.

### Construction.

Section 9-9-208 and this section are mutually exclusive from § 9-9-220 in obtaining the relinquishment of consent or consent to an adoption, and either one or the other should be employed based on the applicable circumstances of the adoption; and the use of both relinquishment of parental rights and consent provisions in the affidavit and consent of natural

mother document was in contravention of these sections. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

### Final Decree.

A natural parent may not withdraw his consent to adoption after entry of an order which by its terms does not require a subsequent hearing, except upon proof of fraud, duress, or intimidation. McCluskey v. Kerlen, 278 Ark. 338, 645 S.W.2d 948 (1983); In re Dailey, 20 Ark. App. 180, 726 S.W.2d 292 (1987); Dale v. Franklin, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

### Interlocutory Order.

Consent held not revocable after entry of interlocutory order of adoption. A. v. B.,

217 Ark. 844, 233 S.W.2d 629 (1950); *Bradford v. Fitzgerald*, 252 Ark. 655, 480 S.W.2d 336 (1972) (preceding cases decided under prior law); *McCluskey v. Kerlen*, 278 Ark. 338, 645 S.W.2d 948 (1983).

Although a mother can revoke her consent for adoption before an interlocutory order, her revocation afterwards and before the final decree is controlled by surrounding circumstances. *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955) (decision under prior law).

A natural mother can withdraw her consent to the adoption of her child after an interlocutory decree has been entered but before a final decree has been entered

only upon a proper showing of fraud, duress, or intimidation. *Pierce v. Pierce*, 279 Ark. 62, 648 S.W.2d 487 (1983).

#### **Withdrawal Prior to Filing.**

This section is silent as to whether consent can be withdrawn prior to the filing of adoption petition. Under this section, consent to adopt cannot be withdrawn after the entry of the final order; prior to entry of adoption decree, consent can be withdrawn if it is found to be in the best interest of the child and court orders withdrawal of consent. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

**Cited:** *Summers v. Mylan*, 287 Ark. 150, 697 S.W.2d 91 (1985).

### **9-9-210. Petition for adoption.**

(a) A petition for adoption signed and verified by the petitioner, shall be filed with the clerk of the court, and state:

(1) The date and place of birth of the individual to be adopted, if known;

(2) The name to be used for the individual to be adopted;

(3) The date the petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how petitioner acquired custody of the minor;

(4) The full name, age, place, and duration of residence of the petitioner;

(5) The marital status of the petitioner, including the date and place of marriage, if married;

(6) That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted;

(7) A description and estimate of value of any property of the individual to be adopted;

(8) The name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his normally required consent, to the adoption; and

(9) In cases involving a child born to a mother unmarried at the time of the child's birth, a statement that an inquiry has been made to the Putative Father Registry and either:

(A) No information has been filed in regard to the child born to this mother; or

(B) Information is contained in the registry.

(b) A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk.

**History.** Acts 1977, No. 735, § 10; A.S.A. 1947, § 56-210; Acts 1989, No. 496, § 6.

## RESEARCH REFERENCES

**Ark. L. Notes.** Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions:

Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

## CASE NOTES

### ANALYSIS

Residence.  
Standing to Adopt.  
Substantial Compliance.

#### Residence.

Adoption order was fatally defective where neither the petition nor the order recited that the prospective adoptive parent or the minors sought to be adopted were residents of the county. *Ozment v. Mann*, 235 Ark. 901, 363 S.W.2d 129 (1962) (decision under prior law).

#### Standing to Adopt.

Subdivision (a)(3) of this section provides that a petition for adoption shall state "the date the petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how petitioner acquired custody of the minor." That language, having to do with

the contents of the petition, does not mean that a person who does not have custody and with whom the child has not been "placed" has no standing; standing to adopt is conferred by § 9-9-204, and that statute does not exclude persons who have served as foster parents of the minor to be adopted. *Patterson v. Robbins*, 295 Ark. 511, 749 S.W.2d 330 (1988).

#### Substantial Compliance.

A petition for the adoption of a child held a sufficient compliance. *Taylor v. Collins*, 172 Ark. 541, 289 S.W. 466 (1927) (decision under prior law); *Arkansas Dep't of Human Servs. v. Couch*, 38 Ark. App. 165, 832 S.W.2d 265 (1992).

A petition for adoption is valid where there is substantial compliance with the statutory requirements; strict compliance is not required. *Reid v. Frazee*, 72 Ark. App. 474, 41 S.W.3d 397 (2001).

**Cited:** *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

## 9-9-211. Report of petitioner's expenditures.

(a) Except as specified in subsection (b) of this section, the petitioner, in any proceeding for the adoption of a minor, shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The petitioner shall file a sworn affidavit showing any expenses incurred in connection with:

- (1) The birth of the minor;
- (2) Placement of the minor with petitioner;
- (3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement;
- (4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person; and
- (5) Fees charged by all attorneys involved in the adoption, including those fees charged by out-of-state attorneys.



(b) This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child, or to an adoption where the person to be adopted is an adult, or where the petitioner and the minor are related to each other in the second degree.

(c) The petitioner shall file a signed, sworn affidavit verifying that all expenses as required by this section have been truthfully listed and shall be informed by the court as to the consequences of knowingly making false material statements.

**History.** Acts 1977, No. 735, § 11;  
1985, No. 107, § 1; A.S.A. 1947, § 56-211.

### **9-9-212. Hearing on petition — Requirements.**

(a)(1) Before any hearing on a petition, the period in which the relinquishment may be withdrawn under § 9-9-220 or in which consent may be withdrawn under § 9-9-209, whichever is applicable, must have expired.

(2) No orders of adoption, interlocutory or final, may be entered prior to the period for withdrawal.

(3) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition.

(4) At least twenty (20) days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to:

(A) Any agency or person whose consent to the adoption is required by this subchapter but who has not consented; and

(B) A person whose consent is dispensed with upon any ground mentioned in § 9-9-207(a)(1), (2), (6), (8), and (9).

(5)(A) When the petitioner alleges that any person entitled to notice cannot be located, the court shall appoint an attorney ad litem who shall make a reasonable effort to locate and serve notice upon the person entitled to notice; and upon failing to so serve actual notice, the attorney ad litem shall publish a notice of the hearing directed to the person entitled to notice in a newspaper having general circulation in the county one (1) time a week for four (4) weeks, the last publication being at least seven (7) days prior to the hearing.

(B) Before the hearing, the attorney ad litem shall file a proof of publication and an affidavit reciting the efforts made to locate and serve actual notice upon the person entitled to notice.

(b)(1)(A) Before placement of the child in the home of the petitioner, a home study shall be conducted by any child welfare agency licensed under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., or any licensed certified social worker.

(B) Home studies on non-Arkansas residents may also be conducted by a person or agency in the same state as the person wishing to adopt as long as the person or agency is authorized under the law of that state to conduct home studies for adoptive purposes.

(2) The Department of Human Services shall not be ordered by any court to conduct an adoptive home study, unless:

(A)(i) The court has first determined the responsible party to be indigent; or

(ii) The child to be adopted is the subject of an open dependency-neglect case and the goal of the case is adoption; and

(B) The person to be studied lives in the State of Arkansas.

(3) All home studies shall be prepared and submitted in conformity with the regulations promulgated pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq.

(4)(A) The home study shall address whether the adoptive home is a suitable home and shall include a recommendation as to the approval of the petitioner as an adoptive parent.

(B) A written report of the home study shall be filed with the court before the petition is heard.

(C) The home study shall contain an evaluation of the prospective adoption with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or minor.

(5)(A) The home study shall include a state-of-residence criminal background check, if available, and national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the adoptive parents and all household members eighteen (18) years of age and older, excluding children in foster care.

(B) If a prospective adoptive parent has lived in a state for at least six (6) years immediately prior to adoption, then only a state-of-residence criminal background check shall be required.

(C) If the Department of Human Services has responsibility for placement and care of the child to be adopted, the home study shall include a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the prospective adoptive parents and all household members eighteen (18) years of age or older, excluding children in foster care.

(D) Upon request by the Department of Human Services, local law enforcement shall provide the Department of Human Services with local criminal background information on the prospective adoptive parents and all household members eighteen (18) years of age and older who have applied to be an adoptive family.

(6) A Child Maltreatment Central Registry check shall be required for all household members age ten (10) and older, excluding children in foster care, as a part of the home study, if such a registry is available in their state of residence.

(7) Additional national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation are not required for international adoptions as they are already a part of the requirements for adoption of the United States Department of Homeland Security Citizenship and Immigration Services.

(8) Each prospective adoptive parent shall be responsible for payment of the costs of the criminal background checks, both the in-state



check and the Federal Bureau of Investigation check if applicable, and shall be required to cooperate with the requirements of the Department of Arkansas State Police and the Child Maltreatment Central Registry, if available, with regard to the criminal and central registry background checks, including, but not limited to, signing a release of information.

(9)(A) Upon completion of the criminal record checks, the Department of Arkansas State Police shall forward all information obtained to either the Department of Human Services if it is conducting the home study, to the agency, to the licensed certified social worker, or to the court in which the adoption petition will be filed.

(B) The Department of Arkansas State Police shall forward all information obtained from the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation to either the Department of Human Services, if it is doing the home study, or to the court in which the adoption petition will be filed.

(C) The circuit clerk of the county where the petition for adoption has been or will be filed shall keep a record of the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation for the court.

(c)(1) Unless directed by the court, a home study is not required in cases in which the person to be adopted is an adult. The court may also waive the requirement for a home study when a stepparent is the petitioner or the petitioner and the minor are related to each other in the second degree.

(2) The home study shall not be waived when the case is a fast-track adoption of a Garrett's Law baby under § 9-9-702.

(d)(1) After the filing of a petition to adopt an adult, the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented.

(2) The court may order a home study to assist it in determining whether the adoption is in the best interest of the persons involved.

(3) The Department of Human Services shall not be ordered by any court to conduct a home study unless:

(A)(i) The court has first determined the responsible party to be indigent; or

(ii) The person to be adopted is the subject of an open dependency-neglect case and the goal of the case is adoption; and

(B) The person to be studied lives in the State of Arkansas.

(4) All home studies shall be prepared and submitted in conformity with the regulations promulgated pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq.

(e)(1) Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs.

(2) Proof of the giving of the notice shall be filed with the court before the petition is heard.



(3) Where consent is not required, notice may be by certified mail with return receipt requested.

(f) When one (1) parent of a child or children is deceased, and the parent-child relationship has not been eliminated at the time of death, and adoption proceedings are instituted subsequent to such decease, the parents of the deceased parent shall be notified under the procedures prescribed in this subchapter of such adoption proceedings, except when the surviving parent-child relationship has been terminated pursuant to § 9-27-341.

(g)(1)(A) Except as provided under subdivision (g)(2) of this section, before placement for adoption, the licensed adoption agency or, when an agency is not involved, the person, entity, or organization handling the adoption shall compile and provide to the prospective adoptive parents a detailed, written health history and genetic and social history of the child that excludes information that would identify birth parents or members of a birth parent's family.

(B) The detailed, written health history and genetic and social history shall be set forth in a document that is separate from any document containing information identifying the birth parents or members of a birth parent's family.

(C) The detailed, written health history and genetic and social history shall be clearly identified and shall be filed with the clerk before the entry of the adoption decree.

(D) Upon order of the court for good cause shown, the clerk may tender to a person identified by the court a copy of the detailed, written health history and genetic and social history.

(2) Unless directed by the court, a detailed, written health history and genetic and social history of the child is not required if:

(A) The person to be adopted is an adult;

(B) The petitioner is a stepparent; or

(C) The petitioner and the child to be adopted are related to each other within the second degree of consanguinity.

**History.** Acts 1977, No. 735, § 12; 1979, No. 599, §§ 3, 4; 1983, No. 324, § 1; 1985, No. 445, §§ 1, 2; A.S.A. 1947, § 56-212; Acts 1991, No. 774, § 3; 1991, No. 1214, § 1; 1993, No. 1204, § 1; 1995, No. 1067, § 1; 1997, No. 1106, § 1; 2003, No. 650, § 3; 2005, No. 437, § 4; 2005, No. 1689, § 1; 2007, No. 539, § 4; 2009, No. 724, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**Amendments.** The 2005 amendment by No. 437 inserted "surviving" following "except when the" in (f).

The 2005 amendment by No. 1689 redesignated former (g)(1)-(4) as present (g)(1)(A)-(D); added "Except as provided under subdivision (g)(2) of this section" in (g)(1)(A); and added (g)(2).

The 2007 amendment added (b)(5)(C) and (D); and inserted "Department of" in (b)(8) and (b)(9)(B).

The 2009 amendment rewrote (b)(2), (b)(5)(A), and (b)(5)(C); substituted "eighteen (18)" for "sixteen (16)" in (b)(5)(A), (b)(5)(C), and (b)(5)(D); inserted "excluding children in foster care" in (b)(6); inserted "performed by the Federal Bureau of Investigation in compliance with fed-

eral law and regulation" in (b)(5)(A) and (b)(5)(C); inserted "performed by the Federal Bureau of Investigation" in (b)(7), (b)(9)(B), and (b)(9)(C); deleted "except the juvenile division of circuit court" following "any court" in (d)(3); inserted "both the in-state check and the Federal Bureau of

Investigation check if applicable" in (b)(8); inserted (c)(2) and (d)(3)(A)(ii) and redesignated subdivisions accordingly; and made related and minor stylistic changes.

**Cross References.** Preference for relative and consideration of religion, § 9-9-102.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

Legislative Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

## CASE NOTES

### ANALYSIS

Grandparents.

Notice.

Service of Process.

State Agency.

Validity of Marriage.

Waiver of Investigation.

### Grandparents.

This section does not grant to grandparents a right to intervene or a right to be heard in adoption proceedings. *Tompkins v. Tompkins*, 341 Ark. 949, 20 S.W.3d 385 (2000).

Paternal grandparents did not have the right to be heard in an adoption proceeding by the natural mother's new husband as (1) they never had custody of the child at issue, and the natural mother had retained custody at all times, and (2) their visitation with the child was the result of a mutual agreement, rather than pursuant to a court order. *Tompkins v. Tompkins*, 341 Ark. 949, 20 S.W.3d 385 (2000).

Where the biological mother gave consent to the adoptive mother to adopt her daughter, neither consent nor notice to the maternal grandparents was required before the adoption could proceed. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

### Notice.

Party having prior custody of child was entitled to notice and was a necessary party. *Siebert v. Benson*, 243 Ark. 843, 422 S.W.2d 683 (1968) (decision under prior law).

Interlocutory decree of adoption should

be annulled where minor mother was not served with process prior to the entry of the interlocutory order, and where the decree was rendered without a defense by a guardian ad litem. *Schrum v. Bolding*, 260 Ark. 114, 539 S.W.2d 415 (1976), superseded by statute as stated in, *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982), superseded by statute as stated in, *Hamm v. Office of Child Support Enforcement*, 336 Ark. 391, 985 S.W.2d 742 (1999) (decision under prior law).

Under this subchapter, if consent to the adoption has been given, notice to the consenting party is not required, nor is any further participation required of them. *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982).

Alleged father of child was not entitled to notice of adoption proceeding under this section, where he was not registered in the state putative father registry, even though he had established a substantial relationship with the child. *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

A decree of adoption would be reversed and remanded for a hearing to determine whether the natural father's consent to adoption was required where he did not receive notice of the petition to adopt and an attorney ad litem was not appointed to represent his right to receive notice. *Reid v. Frazee*, 61 Ark. App. 216, 966 S.W.2d 272 (1998).

The maternal grandmother was not entitled to visitation with two children adopted by the natural father's new wife under § 9-9-215(a)(1), because she was barred from filing her custody/visitation



action by the one-year statute of limitations found in § 9-9-216(b) as she clearly was challenging the effect of the adoption decree by claiming visitation rights under the former statute; a contrary result was not required by the fact that the grandmother was not given notice of the adoption proceeding as required by subsection (f) of this section. *Tate v. Bennett*, 341 Ark. 829, 20 S.W.3d 370 (2000).

Failure to give a natural parent the notice of an adoption proceeding required by subsections (a) and (f) of this section violated due process and entitled the parent to have the subsequently entered decree set aside. *Mayberry v. Flowers*, 347 Ark. 476, 65 S.W.3d 418 (2002).

Where the putative father and the child's mother had a brief romantic relationship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

In an adoption case, where the putative father was served with a summons, petition for adoption, notice of hearing, and notice of deposition on December 14, 2004, and the hearing was held on December 20, 2004, the notice given the father satisfied the requirements of due process. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

#### **Service of Process.**

When it appeared from the record that the parents were nonresidents and their consent to an adoption was never given, it was necessary that service be obtained by publication as provided by statute; otherwise the court was without jurisdiction and the order of adoption was subject to

collateral attack in habeas corpus proceedings. *Hughnes v. Cain*, 210 Ark. 476, 196 S.W.2d 758 (1946) (decision under prior law).

#### **State Agency.**

Probate court can act on petition for adoption without consent of public welfare director (now Director of the Department of Human Services) appointed as guardian for the child. *Ratcliffe v. Williams*, 220 Ark. 807, 250 S.W.2d 330 (1952) (decision under prior law).

#### **Validity of Marriage.**

Only argument advanced by the biological father in an adoption case was that the mother's second marriage was void because he and the mother were still validly married and the biological father was collaterally estopped from asserting that argument. The biological father failed to overcome the presumption of the validity of the marriage between the mother and the adoptive father and it followed that he failed to prove that the adoptive father was not the child's stepparent at the time of the adoption and that a home study was required under subdivision (b)(1)(A) of this section. *Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).

#### **Waiver of Investigation.**

Although the trial court did not expressly waive the investigation pursuant to subsection (c) of this section, the trial court did not err when it found that it was in the child's best interests to remain with the adoptive parents where it focused on the stability she had with the adoptive parents, especially as the adoptive parents were her grandparents and she had been in their custody for the majority of the past three years. *Shorter v. Reeves*, 72 Ark. App. 71, 32 S.W.3d 758 (2000).

**Cited:** *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981); *In re J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990).

### **9-9-213. Required residence of minor.**

A final decree of adoption shall not be issued and an interlocutory decree of adoption does not become final until the minor to be adopted, other than a stepchild of the petitioner, has lived in the home for at least six (6) months after placement by an agency or for at least six (6) months after the petition for adoption is filed.



**History.** Acts 1977, No. 735, § 13; A.S.A. 1947, § 56-213; Acts 1999, No. 518, § 1.

## CASE NOTES

### ANALYSIS

Issuance.  
Subsequent Attack.  
Temporary Order.

#### **Issuance.**

Evidence sustained court finding that the final order of adoption was properly issued. *Cottrell v. Cottrell*, 258 Ark. 116, 522 S.W.2d 433 (1975) (decision under prior law).

#### **Subsequent Attack.**

Adoption decree was not subject to attack after child lived with the adoptive parents for two years from the date of the adoption. *Graham v. Hill*, 226 Ark. 258,

289 S.W.2d 186 (1956) (decision under prior law).

#### **Temporary Order.**

Adoption decree by temporary order continued without any final decree of adoption having been issued was accepted as effecting a legal adoption under Arkansas law. *Dunn v. Richardson*, 336 F. Supp. 649 (W.D. Ark. 1972) (decision under prior law).

**Cited:** *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985); *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989); *In re Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989); *Mayberry v. Flowers*, 69 Ark. App. 307, 12 S.W.3d 652 (2000).

## **9-9-214. Appearance — Continuance — Disposition of petition.**

(a) The petitioner and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the court for good cause shown.

(b) The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.

(c) If at the conclusion of the hearing the court determines that the required consents have been obtained or excused and the required period for the withdrawal of consent and withdrawal of relinquishment have passed and that the adoption is in the best interest of the individual to be adopted, it may (1) issue a final decree of adoption; or (2) issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day therein specified, which day shall not be less than six (6) months nor more than one (1) year from the date of issuance of the decree, unless sooner vacated by the court for good cause shown.

(d) If the requirements for a decree under subsection (c) of this section have not been met, the court shall dismiss the petition and the child shall be returned to the person or entity having custody of the child prior to the filing of the petition.

**History.** Acts 1977, No. 735, § 14; A.S.A. 1947, § 56-214; Acts 1991, No. 774, § 4.

## RESEARCH REFERENCES

**Ark. L. Rev. Note**, Strict Construction, Jurisdictional Requirements and the Arkansas Adoption Code: *Martin v. Martin*

and a Missed Chance for Clarity, 49 Ark. L. Rev. 123.

## CASE NOTES

## ANALYSIS

Best Interest of the Child.  
Effective Date of Order.  
Petition Granted.  
Presence of Adopted Person.  
Standard of Review.  
Standing in Loco Parentis.  
Subsequent Hearing.

**Best Interest of the Child.**

Facts did not necessarily show adoption to be in the child's best interest. *Dixon v. Dixon*, 286 Ark. 128, 689 S.W.2d 556 (1985).

While keeping siblings together is a commendable goal and an important consideration as a general rule, it is but one factor that must be taken into account when determining the best interest of the child. *Arkansas Dep't of Human Servs. v. Couch*, 38 Ark. App. 165, 832 S.W.2d 265 (1992).

Putative father's failure to formally establish paternity was not a major factor to be considered regarding the best interest of the child. *In re B.L.S.*, 50 Ark. App. 155, 901 S.W.2d 38 (1995).

That attempted adoptive mother was on social security disability and drawing welfare benefits will not provide a basis for a change in custody. *In re B.L.S.*, 50 Ark. App. 155, 901 S.W.2d 38 (1995).

**Effective Date of Order.**

Adoption decree is effective as of the date of the interlocutory order unless set aside for good reason at final hearing. *A. v. B.*, 217 Ark. 844, 233 S.W.2d 629 (1950) (decision under prior law).

Adoptive parent did not timely move to vacate temporary order of adoption. *Toai Cong Pham v. Hanh My Truong*, 291 Ark. 442, 725 S.W.2d 569 (1987).

**Petition Granted.**

A probate court may grant a petition for adoption if it determines at the conclusion of a hearing that the required consents have been obtained or excused and the

adoption is in the best interest of the child or individual to be adopted. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

**Presence of Adopted Person.**

Where the final decree of adoption recited "that all proper persons are before the court," it must be assumed the finding means that the children were present at the hearing. *Brown v. Fleming*, 266 Ark. 814, 586 S.W.2d 8 (Ct. App. 1979).

Where the record was silent as to whether the child sought to be adopted was present at hearing, the court would indulge in the presumption that the court below had jurisdiction and acted correctly. *Loveless v. May*, 278 Ark. 127, 644 S.W.2d 261 (1983).

**Standard of Review.**

Supreme Court reviews probate proceedings de novo and will not reverse a probate court's decision regarding the best interest of a child to be adopted unless it is clearly against the preponderance of the evidence, giving due regard to the opportunity and superior position of the trial court to judge the credibility of witnesses. Personal observations of the court are entitled to even more weight in cases involving the welfare of a young child. *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989); *In re B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

**Standing in Loco Parentis.**

Subsection (a) of this section is mandatory and jurisdictional and could not be complied with unless persons standing in loco parentis to child were given notice of guardianship and adoption proceedings. *Nelson v. Shelly*, 268 Ark. 760, 600 S.W.2d 411 (Ct. App. 1980).

**Subsequent Hearing.**

After the natural father brought to the court's attention that the child at issue, who was seven years of age at the beginning of this process, was past the age of ten years at the time the trial was held, the probate judge properly scheduled a

subsequent hearing at which he questioned the child and ascertained the child's consent to be adopted. *Reid v. Frazee*, 72 Ark. App. 474, 41 S.W.3d 397 (2001).

**Cited:** *In re Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990); *Mayberry v. Flowers*, 69 Ark. App. 307, 12 S.W.3d 652 (2000).

### **9-9-215. Effect of decree of adoption.**

(a) A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the biological parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his or her biological relatives, including his or her biological parents, so that the adopted individual thereafter is a stranger to his or her former relatives for all purposes. This includes inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship. However, in cases where a biological or adoptive parent dies before a petition for adoption has been filed by a step-parent of the minor to be adopted the court may grant visitation rights to the parents of the deceased biological or adoptive parent of the child if such parents of the deceased biological or adoptive parent had a close relationship with the child prior to the filing of a petition for step-parent adoption, and if such visitation rights are in the best interests of the child. The foregoing provision shall not apply to the parents of a deceased putative father who has not legally established his paternity prior to the filing of a petition for adoption by a step-parent. For the purposes of this section, "step-parent" means an individual who is the spouse or surviving spouse of the biological or adoptive parent of a child but who is not a biological or adoptive parent of the child.

(2) To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

(b) An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.

(c) Sibling visitation shall not terminate if the adopted child was in the custody of the Department of Human Services and had a sibling



who was not adopted by the same family and before adoption the circuit court in the juvenile dependency-neglect or families in need of services case has determined that it is in the best interests of the siblings to continue visitation and has ordered visitation between the siblings to continue after the adoption.

**History.** Acts 1977, No. 735, § 15; 1983, No. 324, § 2; 1985, No. 403, § 2; A.S.A. 1947, § 56-215; Acts 1995, No. 889, § 1; 2005, No. 437, §§ 5, 6.

**Amendments.** The 2005 amendment substituted “biological” for “natural” throughout (a)(1); and added (c).

RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.  
Arkansas Law Survey, Saunders, Torts, 7 U. Ark. Little Rock L.J. 259.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

CASE NOTES

ANALYSIS

- Applicability.
- Disinterment.
- Exclusions Permitted.
- Finality of Decree.
- Inheritance.
- Petition Denied.
- Termination of Legal Relationships.
- In General.
- Grandparents.
- Wrongful Death Action.

Applicability.

The law in effect at the time of an ancestor’s death controls the issue of inheritance, not the law in effect at the time of adoption; this section applies where the death occurs after this section’s 1977 enactment, even if the adoption occurred before 1977. *Wheeler v. Myers*, 330 Ark. 728, 956 S.W.2d 863 (1997).

Because adoption, inheritance laws were not intended to modify the established meaning of terms used in deeds, a trial court did not err in refusing to consider § 56-109 (repealed) when determining whether or not an adopted child was entitled to a remainder interest in a deed that used the word “heirs.” *Brown v. Johnson*, 81 Ark. App. 60, 97 S.W.3d 924 (2003).

Disinterment.

Appellate court overruled appellants’ assertion that the adoptive father’s per-

mission was not needed to disinter the decedent’s remains, because either the adoptive father’s consent was necessary or in cases where there was disagreement, the matter must be submitted for a judicial decision, when for all intents and purposes, the adoptive father was the decedent’s legitimate blood descendent. *Tozer v. Warden*, 101 Ark. App. 396, 278 S.W.3d 134 (2008).

Exclusions Permitted.

Even though this section treats adopted persons as blood descendants for “all purposes,” it nevertheless allows documents or instruments to expressly exclude an adopted individual from their operation. *Sides v. Beene*, 327 Ark. 401, 938 S.W.2d 840 (1997).

Finality of Decree.

Adoptive parent who did not timely appeal a temporary order of adoption did not, under ARCP 41, have an absolute right to dismiss his petition for adoption anytime prior to the entry of a final order of adoption. *Toai Cong Pham v. Hanh My Truong*, 291 Ark. 442, 725 S.W.2d 569 (1987).

Once an interlocutory decree of adoption is entered, it is construed as a final decree if no subsequent hearing is required by the terms of that decree; and the natural parent cannot withdraw consent after entry of the decree unless fraud, duress, or intimidation is shown. In re

Milam, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

Subsection (b) of this section provides, in the last sentence, that an interlocutory decree can be set aside. *Dougan v. Gray*, 318 Ark. 6, 884 S.W.2d 239 (1994).

### **Inheritance.**

Child adopted after execution of will stood in the position of a natural born child born subsequently to the execution of the will, and inherited accordingly. *Grimes v. Jones*, 193 Ark. 858, 103 S.W.2d 359 (1937) (decision under prior law).

Where adoption was void, adopted child could not inherit real estate but was entitled to inherit personal property. *Dean v. Brown*, 216 Ark. 761, 227 S.W.2d 623 (1950) (decision under prior law).

Adopted son was heir of first adoptive father even though he was adopted by others prior to death of first adoptive father. *Hawkins v. Hawkins*, 218 Ark. 423, 236 S.W.2d 733 (1951) (decision under prior law).

Adopted son held not "heir of the body" of deceased foster parent. *Davis v. Davis*, 219 Ark. 623, 243 S.W.2d 739 (1951) (decision under prior law).

Children adopted by decedent shortly before his death were entitled to inherit from him even though the final decree was not entered during his lifetime. *Williams v. Nash*, 247 Ark. 135, 445 S.W.2d 69 (1969) (decision under prior law).

A final decree of adoption must be entered in this state if an adopted child is to inherit at all from his adoptive parents, as inheritance under the "virtual adoption" theory is unknown to the law of this jurisdiction. *Wilks v. Langley*, 248 Ark. 227, 451 S.W.2d 209 (1970) (decision under prior law).

The law in effect at the time of the death of the adopted child is controlling on matters of inheritance; thus, under this section, the heirs of the adoptive parents inherit to the exclusion of the blood relatives. *In re Estate of Caisson*, 289 Ark. 216, 710 S.W.2d 211 (1986).

### **Petition Denied.**

Circuit court did not err in denying the adoption petition because it was the mother's burden to present credible evidence to convince the circuit judge that adoption was in the best interest of the child, and considering the circuit court's determina-

tion that the effect of this section was speculative and that the mother's allegations against the father could be afforded no weight, she failed to meet this burden. There was no corroborating testimony or evidence as to the mother's allegations regarding the father's use of alcohol and drugs or the father's abuse of his children, other than what the mother told her mother. *In re Adoption of M.K.C.*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 257 (Mar. 5, 2009).

### **Termination of Legal Relationships.**

Trial court erred in holding that before appellant's adoption of his wife's adopted child could go forward, appellant was required to either obtain the consent of the child's biological father or produce an order demonstrating that the biological father's parental rights had been terminated because by operation of law, the former adoption decree forever severed and held for naught the biological father's rights, responsibilities, and legal relationship with the child. *In re Adoption of H.L.M.*, 99 Ark. App. 115, 257 S.W.3d 587 (2007).

Arkansas Supreme Court has interpreted the statute as an expression of public policy favoring a complete severance of the relationship between an adopted child and his or her biological family in order to further the best interest of the child. *In re Adoption of H.L.M.*, 99 Ark. App. 115, 257 S.W.3d 587 (2007).

### **—In General.**

An adoption not only terminates all legal relationships between the adopted individual and his natural parents and legally makes him a stranger to them, it also commands that all courts recognize that principle in construing all statutes. *Webb v. Harvell*, 563 F. Supp. 172 (W.D. Ark. 1983).

Section 9-27-341(c)(1) and subdivision (a)(1) of this section point to a public policy which, in determining what is in the child's best interest, favors a complete severing of the ties between a child and its biological family when he is placed for adoption. *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993); *Vice v. Andrews*, 328 Ark. 573, 945 S.W.2d 914 (1997).

### **—Grandparents.**

Decree of adoption would terminate the relational status between adopted grand-

children and their grandparents. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981).

Paternal grandparents of adopted child were not entitled to obtain visitation privileges since this section terminates all legal relationships so that the adopted infant is for all legal purposes a stranger to his former relatives; it is unquestionably within the province of the legislature to decide that the reasons favoring the solidarity of the adoptive family outweigh those favoring the grandparents and other blood kin who are related to the child through its deceased parent. *Wilson v. Wallace*, 274 Ark. 48, 622 S.W.2d 164 (1981); *Woodson v. Kilcrease*, 7 Ark. App. 252, 648 S.W.2d 72 (1983).

When the public policy favoring maintenance of grandparental ties collides with the stronger public policy to strengthen the relationships within adoptive families, the former must give way to the latter. *Woodson v. Kilcrease*, 7 Ark. App. 252, 648 S.W.2d 72 (1983).

A grandmother's visitation and custody rights were derivative of her daughter's parental rights, and, as a result, were terminated when her daughter's parental rights were terminated. *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

The biological father's consent to an adoption terminated any rights of visitation that his mother might claim. *Vice v.*

*Andrews*, 328 Ark. 573, 945 S.W.2d 914 (1997).

The maternal grandmother was not entitled to visitation with two children adopted by the natural father's new wife under subsection (a)(1) of this section, because she was barred from filing her custody/visitation action by the one-year statute of limitations found in § 9-9-216(b) as she clearly was challenging the effect of the adoption decree by claiming visitation rights under the former statute; a contrary result was not required by the fact that the grandmother was not given notice of the adoption proceeding as required by § 9-9-212(f). *Tate v. Bennett*, 341 Ark. 829, 20 S.W.3d 370 (2000).

### **Wrongful Death Action.**

The omission of any provision for an adoptive parent's death does not show a legislative intent to deny an adopted child the right to assert a cause of action for the death of the adoptive parent. *Moon Distribs., Inc. v. White*, 245 Ark. 627, 434 S.W.2d 56 (1968) (decision under prior law).

Where the decedent's natural-born child had been adopted, the child was no longer the child of the decedent and was not one of the beneficiaries authorized to recover for the wrongful death of the decedent. *Webb v. Harvell*, 563 F. Supp. 172 (W.D. Ark. 1983).

**Cited:** *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985); *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989).

## **9-9-216. Appeal from and validation of adoption decree.**

(a) An appeal from any final order or decree rendered under this subchapter may be taken in the manner and time provided for appeal from a judgment in a civil action.

(b) Subject to the disposition of an appeal, upon the expiration of one (1) year after an adoption decree is issued, the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter unless, in the case of the adoption of a minor, the petitioner has not taken custody of the minor or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.

**History.** Acts 1977, No. 735, § 16; A.S.A. 1947, § 56-216.

**Publisher's Notes.** The Arkansas Supreme Court, in its per curiam of November 22, 1982, observed that some confu-

sion exists among members of the bar as to the date of the final order for the purpose of appeal. The court stated: "In order to put an end to the confusion, we shall prospectively construe any decree of



adoption to be a final decree, no matter whether it is interlocutory or final, if no

subsequent hearing is required by the terms of that decree."

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, *In re Adoption of Pollock*: Arkansas Probate Court Juris-

diction — A Question of Policy, 41 Ark. L. Rev. 677.

## CASE NOTES

### ANALYSIS

Construction.  
Collateral Attack.  
Finality of Decree.  
Fraud.  
Jurisdiction.  
Limitation of Actions.  
Res Judicata.  
Standing to Appeal.

### Construction.

The one-year statute of limitations in subsection (b) of this section provides a special procedure which cannot be annulled by ARCP 41(a) or the savings statute, § 16-56-126, which allows an action dismissed without prejudice to be refiled within one year of the dismissal. *In re Martindale*, 327 Ark. 685, 940 S.W.2d 491 (1997).

This section provides a maximum one-year time limit after which any action to set aside an adoption order is barred, but does not affect the 90 day limit set forth in Rule 60(a) of the Arkansas Rules of Civil Procedure and only serves to limit the time in which a probate court could act to set aside an order pursuant to Rule 60(c) of the Arkansas Rules of Civil Procedure. *Mayberry v. Flowers*, 69 Ark. App. 307, 12 S.W.3d 652 (2000).

### Collateral Attack.

In a collateral attack on a foreign adoption former section setting the time upon which an adoption becomes final did not apply; where the parent was not given notice of the adoption proceeding; the section did not begin to run until the parent discovered the identity of the adopting parties. *Olney v. Gordon*, 240 Ark. 807, 402 S.W.2d 651 (1966) (decision under prior law).

A petition to determine heirship filed by deceased's collateral heirs was a collateral attack on the order of adoption, which was not subject to collateral attack. *Williams v.*

*Nash*, 247 Ark. 135, 445 S.W.2d 69 (1969) (decision under prior law).

Probate court, in adoption proceedings, had no authority to grant visitation rights to grandmother and hence visitation portion of the adoption decree in excess of the court's authority or subject matter jurisdiction and was void and subject to collateral attack. *Poe v. Case*, 263 Ark. 488, 565 S.W.2d 612 (1978) (decision under prior law).

### Finality of Decree.

Any decree of adoption is a final decree, no matter whether it is interlocutory or final, if no subsequent hearing is required by the terms of that decree. *In re Adoption Orders*, 277 Ark. 520, 642 S.W.2d 573 (1982).

Adoptive parent who did not timely appeal a temporary order of adoption did not, under ARCP 41, have an absolute right to dismiss his petition for adoption anytime prior to the entry of a final order of adoption. *Toai Cong Pham v. Hanh My Truong*, 291 Ark. 442, 725 S.W.2d 569 (1987).

### Fraud.

Where an order for the adoption of a minor child was entered in due form, the person adopting the child and all others claiming as his heirs were estopped to question the validity of the proceedings on the ground of fraud in its procurement, not found on the face of the record. *Avery v. Avery*, 160 Ark. 375, 255 S.W. 18 (1923) (decision under prior law).

### Jurisdiction.

Complaint, seeking to set aside adoption decree, was improperly brought in the chancery court when the probate court of the county granted the adoption. *Cotten v. Hamblin*, 233 Ark. 65, 342 S.W.2d 478 (1961) (decision under prior law).

### Limitation of Actions.

Former section barred plaintiff's petition to vacate a final order of adoption of

his former wife's natural child on procedural grounds brought four years after the issuance of the final order. *Cottrell v. Cottrell*, 258 Ark. 116, 522 S.W.2d 433 (1975) (decision under prior law).

Where a petition challenging an adoption was filed before this subchapter became effective, the trial court erred in applying the one-year statute of limitations under this section to the action rather than the two-year limitation under former section. *Allton v. Sumter*, 274 Ark. 448, 625 S.W.2d 502 (1981).

Where natural father was given no notice of the pending adoption, it would be a denial of due process to hold that the adoption decree was protected from challenge after one year from its issuance. *McKinney v. Ivey*, 287 Ark. 300, 698 S.W.2d 506 (1985).

The maternal grandmother was not entitled to visitation with two children adopted by the natural father's new wife under § 9-9-215(a)(1), because she was barred from filing her custody/visitation action by the one-year statute of limitations found in subsection (b) of this section as she clearly was challenging the effect of the adoption decree by claiming visitation rights under the former statute; a contrary result was not required by the fact that the grandmother was not given notice of the adoption proceeding as required by § 9-9-212(f). *Tate v. Bennett*, 341 Ark. 829, 20 S.W.3d 370 (2000).

It was error for the trial court to deny a motion to dismiss a petition for adoption without a hearing on the merits, notwithstanding that the motion was filed more than one year after the grant of a temporary order of adoption, since there was a question of fact as to whether the petitioner had taken custody of the child. *Coker v. Child Support Enforcement Unit*, 69 Ark. App. 293, 12 S.W.3d 669 (2000).

Failure to give a natural parent the required notice of an adoption proceeding in which the parent's parental rights were terminated allowed the parent to have the decree set aside after the expiration of the limitations period in subsection (b) of this section, even though the parent gained actual knowledge of the termination, albeit after the fact, before expiration of the limitations period. *Mayberry v. Flowers*, 347 Ark. 476, 65 S.W.3d 418 (2002).

Trial court correctly focused on whether an adoptive father had taken custody of

the children and found that, in addition to physical custody being with the adoptive father and biological mother, the adoptive father also assumed parental duties; thus, the biological father's petition to set aside the adoption decree, which was filed more than one year after the decree was entered, was time-barred under subsection (b) of this section. *Carr v. Millar*, 86 Ark. App. 292, 184 S.W.3d 470 (2004).

### **Res Judicata.**

In the father's second appeal seeking to set aside the adoption, it was clear that res judicata was applicable where: (1) the judgment entered by the trial court and subsequently affirmed by the appellate court finding no fraud and applying former statute of limitations was a final judgment on the merits; (2) there was no dispute that the circuit court had jurisdiction over the petition to annul the adoption; (3) the suit was fully contested and resulted in a final judgment that was appealed to the appellate court; (4) both suits involved the same issue, namely the annulment of the adoption decree; (5) both suits involved the exact same parties; and (6) there could have been no doubt that the father had every opportunity to challenge the adoption based on the mental-defect claim in the father's first petition to annul the adoption. *McAdams v. McAdams*, 357 Ark. 591, 184 S.W.3d 24 (2004).

### **Standing to Appeal.**

State agency did not have the exclusive right to file an action for annulment of adoption proceeding, but the mother had an equal right to file suit. *Gillen v. Edge*, 214 Ark. 776, 217 S.W.2d 926 (1949) (decision under prior law).

An outsider or stranger could not maintain a petition to annul an order of adoption, but where petitioners occupied loco parentis relationship to the children, they could maintain the petition. *Cotten v. Hamblin*, 234 Ark. 109, 350 S.W.2d 612, 92 A.L.R.2d 811 (1961) (decision under prior law).

Absent a loco parentis relationship grandparents had no legal interest in children's adoption which would permit them to challenge the adoption decree. In re *Adoption of Hensley*, 270 Ark. 1004, 607 S.W.2d 80 (Ct. App. 1980), overruled, *Wilson v. Wallace*, 274 Ark. 48, 622 S.W.2d 164 (1981).



Petitioner had no standing to set aside the adoption decree and was procedurally barred from proceeding where he waited more than four years to file his motion to set aside the decree. *Summers v. Griffith*,

317 Ark. 404, 878 S.W.2d 401 (1994), cert. denied, 514 U.S. 1065, 115 S. Ct. 1696, 131 L. Ed. 2d 559 (1995).

**Cited:** *Martin v. Martin*, 316 Ark. 765, 875 S.W.2d 819 (1994).

### **9-9-217. Confidentiality of hearings and records.**

(a) Notwithstanding any other law concerning public hearings and records:

(1) All hearings held in proceedings under this subchapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.

(2)(A) Adoption records shall be closed, confidential, and sealed unless authority to open them is provided by law or by order of the court for good cause shown.

(B)(i) When an adoption is filed or heard pursuant to § 9-27-301 et seq., any portion of the court file relating to the adoption shall be maintained separately from the file of other pending juvenile matters concerning the juvenile who is the subject of the adoption or the family of the juvenile.

(ii) Once final disposition is made in the adoption proceedings, the adoption file shall be transferred from the clerk who is the custodian of juvenile records to the clerk who is the custodian of records.

(iii) The entry of the adoption decree will be entered by the clerk in the book containing adoption records.

(iv) The clerk shall assign the file a docket number, shall prepare an application for a new birth record as provided in this section, and shall maintain the file as if the case had originated as an adoption case.

(v) No filing fee shall be assessed by the clerk upon the transfer and creation of the new adoption file.

(vi) Any adoption record shall be handled as provided in this section.

(C)(i) In the event an adoption record is randomly selected to be audited for determination of compliance with requirements found in federal laws pertaining to periodic and dispositional review of foster care cases, the Administrator of Adoptions of the Department of Human Services is authorized to open the file notwithstanding any section in this subchapter prohibiting disclosure of adoption records.

(ii) It shall be the responsibility of the administrator to procure and provide from this file all records pertinent to the federal requirements under review.

(iii) The remainder of the record shall remain sealed. Such portions of the record that may be removed shall be returned to the sealed file upon completion of the federal audit.



(iv) No one shall be permitted to review the removed portion of the record except in an official capacity, and, except for uses required by the federal audit in compliance with state and federal statutes and regulations, such a person shall be bound to keep the contents of such records confidential.

(D)(i) In the event the Department of Human Services has the opportunity to enhance its federal funding by a review of its adoptions records, then the administrator is authorized to open such files notwithstanding any section in this subchapter.

(ii) It shall be the responsibility of the administrator to procure and provide from this file all records pertinent to the review.

(iii) The remainder of the record shall remain sealed.

(iv) The portion of the record that may be removed shall be returned to the sealed file upon completion of the review.

(v) No one shall be permitted to review the removed portion of the record except in an official capacity, and, except for uses required to provide for the enhancement of possible federal funding in compliance with state and federal statutes and regulations, such a person shall be bound to keep the contents of such records confidential.

(E)(i) In the event that an adoptive family contacts the department and indicates a desire for the placement of a subsequent child and no more than five (5) years have lapsed since the adoption file has been sealed, the department is authorized to unseal the adoption file notwithstanding any section in this subchapter.

(ii) It shall be the responsibility of the administrator to remove the home study from the file and make a copy of the home study.

(iii) The remainder of the file shall remain sealed.

(iv) The administrator shall return the home study to the file, which shall then be resealed.

(v) The department shall be permitted to use a copy of the original home study.

(vi) The adoptive family shall be permitted to use a copy of the original home study with a petition to adopt a subsequent child from the department if the original home study is accompanied by an update.

(b) The provisions of this section shall not prohibit the disclosure of information pursuant to § 9-9-501 et seq.

(c) All papers and records pertaining to adoptions prior to May 19, 1986, are declared to be confidential and shall be subject to disclosure only pursuant to this section.

(d)(1) All records of any adoption finalized in this state shall be maintained for ninety-nine (99) years by the agency, person, entity, or organization that handled the adoption.

(2) If the agency, person, entity, or organization that handled the adoption ceases to function, all adoption records shall be transferred to the department or another licensed agency within this state with notice to the department.

**History.** Acts 1986 (2nd Ex. Sess.), No. 23, §§ 2, 3; A.S.A. 1947, §§ 56-223, 56-224; Acts 1993, No. 758, § 3; 1999, No. 945, §§ 1, 2; 2003, No. 650, § 4; 2003, No. 1166, § 1; 2005, No. 1685, § 2.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**Publisher's Notes.** Acts 1986 (2nd Ex. Sess.), No. 23, § 1, provided, in part, that

the repeal, by Acts 1985, No. 957, of Acts 1977, No. 735, § 17, as amended by Acts 1985, Nos. 423 and 673, was an obvious error causing confusion as to the confidentiality of adoption proceedings and records, and further provided that it was the purpose of Acts 1986 (2nd Ex. Sess.), No. 23, to reenact the provisions of Acts 1977, No. 735, § 17, as amended by Acts 1985, Nos. 423 and 673, with the addition of a provision to recognize disclosures of adoption information pursuant to Acts 1985, No. 957.

**Amendments.** The 2005 amendment added (a)(2)(E).

## RESEARCH REFERENCES

**A.L.R.** Restricting access to judicial records of concluded adoption proceedings. 103 A.L.R.5th 255.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

## CASE NOTES

### Appeals.

Although this subchapter does not govern appeals of adoption cases, the court has closed records in adoption cases following the spirit of this section. In re K.F.H., 310 Ark. 53, 834 S.W.2d 647 (1992).

**Cited:** Arkansas Dep't of Human Servs. v. Hardy, 316 Ark. 119, 871 S.W.2d 352 (1994); Arkansas Best Corp. v. General Elec. Capital Corp., 317 Ark. 238, 878 S.W.2d 708 (1994); Dougan v. Gray, 318 Ark. 6, 884 S.W.2d 239 (1994).

## 9-9-218. Recognition of foreign decrees affecting adoption.

A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree were issued by a court of this state.

**History.** Acts 1977, No. 735, § 18; A.S.A. 1947, § 56-218.

## 9-9-219. Application for new birth record.

Upon entry of a final decree of adoption or an interlocutory decree of adoption that does not require a subsequent hearing, the clerk of the court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the Division of Vital

Records of the Department of Health for statistical purposes. The division may issue a birth certificate for any child born in a place whose law does not provide for the issuance of a substituted certificate.

**History.** Acts 1977, No. 735, § 19; A.S.A. 1947, § 56-219; Acts 2007, No. 539, § 5.

**Amendments.** The 2007 amendment substituted "Upon entry of a final decree of adoption or an interlocutory decree of adoption that does not require a subse-

quent hearing" for "Within thirty (30) days after an adoption decree becomes final," deleted "Department of Health" preceding "Division of Vital," inserted "of the Division of Health of the Department of Health and Human Services," and made a minor punctuation change.

### **9-9-220. Relinquishment and termination of parent and child relationship.**

(a) With the exception of the duty to pay child support, the rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or prior to an adoption proceeding as provided in this section. The duty of a parent to pay child support shall continue until an interlocutory decree of adoption is entered.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by an adult parent, subject to the court's approval.

If the parent is a minor, the writing shall be signed by a guardian ad litem who is appointed to appear on behalf of the minor parent for the purpose of executing such a writing. The signing shall occur in the presence of a representative of an agency taking custody of the child, or in the presence of a notary public, whether the agency is within or without the state, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed. The relinquishment shall be executed in the same manner as for a consent to adopt under § 9-9-208.

(1)(A) The relinquishment may be withdrawn within ten (10) calendar days, or, if a waiver of the ten-day period is elected under § 9-9-220(b)(3), five (5) calendar days after it is signed or the child is born, whichever is later.

(i) Notice of withdrawal shall be given by filing an affidavit with the probate division clerk of the circuit court in the county designated by the writing as the county in which the guardianship petition will be filed if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship. If the ten-day period, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(ii) No fee shall be charged for the filing of the affidavit.

(B) The relinquishment shall state that the parent has this right of withdrawal and shall provide the address of the probate division clerk



of the circuit court in which the guardianship will be filed if there is a guardianship, or where the petition for adoption will be filed if there is no guardianship; or

(2) In any other situation, if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.

(3) The relinquishment shall state that the person may waive the ten-day period for the withdrawal of relinquishment for an adoption and to elect to limit the maximum time for the withdrawal of relinquishment for an adoption to five (5) days.

(c) In addition to any other proceeding provided by law, the relationship of parent and child may be terminated by a court order issued under this subchapter on any ground provided by other law for termination of the relationship, or on the following grounds:

(1) Abandonment as defined in § 9-9-202(7).

(2) Neglect or abuse, when the court finds the causes are irremediable or will not be remedied by the parent.

(A) If the parents have failed to make reasonable efforts to remedy the causes and such failure has occurred for twelve (12) months, such failure shall raise the rebuttable presumption that the causes will not be remedied.

(B) If the parents have attempted to remedy the causes but have failed to do so within twelve (12) months, and the court finds there is no reasonable likelihood the causes will be remedied by the eighteenth month, the failures shall raise the rebuttable presumption that the causes will not be remedied.

(3) That in the case of a parent not having custody of a child, his or her consent is being unreasonably withheld contrary to the best interest of the child.

(d) For the purpose of proceeding under this subchapter, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption proceeding other than as provided in this section.

(e) A petition for termination of the relationships of parent and child made in connection with an adoption proceeding may be made by:

(1) Either parent if termination of the relationship is sought with respect to the other parent;

(2) The petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child or the attorney ad litem for the child;

(3) An agency; or

(4) Any other person having a legitimate interest in the matter.

(f)(1) The petition shall be filed and service obtained according to the Arkansas Rules of Civil Procedure.

(2) Before the petition is heard, notice of the hearing and the opportunity to be heard shall be given the parents of the child, the guardian of the child, the person having legal custody of the child, a person appointed to represent any party in this proceeding, and any person granted rights of care, control, or visitation by a court of competent jurisdiction.

(g) Notwithstanding the provisions of subsection (b) of this section, a relinquishment of parental rights with respect to a child executed under this section may be withdrawn by the parent, and a decree of a court terminating the parent-child relationship under this section may be vacated by the court upon motion of the parent if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

**History.** Acts 1977, No. 735, § 20; 1985, No. 879, §§ 2-4; A.S.A. 1947, § 56-220; Acts 1991, No. 774, § 5; 1991, No. 1214, § 2; 1995, No. 1184, § 22; 1995, No. 1284, § 2; 1995, No. 1335, § 6; 1997, No. 1227, § 15; 1999, No. 518, § 2; 1999, No. 945, § 3; 2001, No. 1779, § 1; 2003, No. 1185, § 8; 2003, No. 1743, § 1; 2009, No. 219, § 1; 2009, No. 230, § 2.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court..."

**Amendments.** The 2009 amendment by No. 219 rewrote (c)(1).

The 2009 amendment by No. 230, in (b), inserted "or, if a waiver of the ten-day period is elected under § 9-9-220(b)(3), five (5) calendar days" in (b)(1)(A), inserted "division" in (b)(1)(A)(i) and (b)(1)(B), inserted "or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period" in (b)(1)(A)(i), inserted (b)(3), and made related changes.

## RESEARCH REFERENCES

**A.L.R.** Parents' mental illness or mental deficiency as ground for termination of parental rights — Issues concerning guardian ad litem and counsel. 118 A.L.R.5th 561.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Applicability of Americans With Disabilities Act. 119 A.L.R.5th 351.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Evidentiary issues. 122 A.L.R.5th 337.

**U. Ark. Little Rock L.J.** Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 913.

## CASE NOTES

### ANALYSIS

In General.  
Construction.  
Custody.

Jurisdiction.  
Revocation.  
Support.  
Termination by Court Order.  
Unreasonable Withholding of Consent.

**In General.**

The natural relationship between parent and child is subject to absolute severance in an adoption proceeding; however, the courts are inclined to favor the maintaining of the natural relationship when the adoption is sought without the consent of a parent and against his or her protest. *Lindsey v. Ketchum*, 10 Ark. App. 128, 661 S.W.2d 453 (1983).

Father was not unfit simply because he was incarcerated, and there was no evidence that he posed a risk to his son, rather, evidence showed that he purchased clothing for his son before he was born and had consistently sought contact with his son even while incarcerated, which were actions consistent with a parent who was making a good-faith effort to discharge his parental duties; there were no facts showing that the child would suffer any untoward effect by allowing him to establish a relationship with his father, and there was no evidence showing that the child would be adversely affected by knowledge of or association with his father, thus, the trial court's order granting the guardian's adoption petition and terminating the father's rights was reversed. *Henderson v. Callis*, 97 Ark. App. 163, 245 S.W.3d 174 (2006).

**Construction.**

Section 9-9-208 and this section are mutually exclusive, in that they address separate methods by which a child may be adopted and provide different means by which the relinquishment of consent or direct consent may be withdrawn. In re *Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990).

Sections 9-9-208 and 9-9-209 are mutually exclusive from this section in obtaining the relinquishment of consent or consent to an adoption, and either one or the other should be employed based on the applicable circumstances of the adoption; and the use of both relinquishment of parental rights and consent provisions in the affidavit and consent of natural mother document was in contravention of these sections. In re *Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990).

Local rule imposed by chancellor blending the different statutory consent requirements of § 9-9-208 and this section was inappropriate. In re *Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990).

Subdivisions (c)(2)(A) and (B) of this section were not effective on the date that the father's child support order was entered and, therefore, the statute was not applicable to the father's case; the legislature intended for those non-custodial parents whose child support orders were entered after August 13, 2001, to be affected, such that the statute was meant to apply prospectively from August 31, 2001, not retroactively to May 31, 2001, the date the divorce decree was entered. *Stroud v. Cagle*, 87 Ark. App. 95, 189 S.W.3d 76 (2004).

**Custody.**

It was not unconscionable for the trial court to consider a putative father as "a parent not having custody" within the meaning of subdivision (c)(3) of this section, despite the putative father's contention that he should be considered as a noncustodial parent because he surrendered his child pursuant to a court order rather than voluntarily. *Wineman v. Brewer*, 280 Ark. 527, 660 S.W.2d 655 (1983).

**Jurisdiction.**

In a proceeding seeking to set aside a prior divorce decree adjudicating a purported father the legal parent of a minor child, a trial court lacked authority to terminate the father's parental rights because the action did not concern adoption. *Hudson v. Kyle*, 352 Ark. 346, 101 S.W.3d 202 (2003).

**Revocation.**

Where mother of child consented to appointment of state agency as guardian for child, and later on same day attempted to revoke authority, mother was not entitled to writ of habeas corpus but must file a complaint in probate court to set aside prior order. *Haller v. Ratcliffe*, 215 Ark. 628, 221 S.W.2d 886 (1949) (decision under prior law).

Even in the case of a final adoption decree, consent to adopt may be withdrawn upon a proper showing of fraud, duress or intimidation. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

Where both relinquishment of parental rights and consent provisions were contained in the same document purporting to sanction the adoption of a minor child and the trial court included the ten day right to withdraw provision in its decree of



adoption, the document was, in the main, a relinquishment of parental rights as embodied in this section and natural mother's revocation of her relinquishment five days after she signed the affidavit was effective. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

### **Support.**

Where, at the time of appellee's execution of the relinquishment of parental rights, the law did not provide that a parent had a continuing duty of support until the entry of an interlocutory decree of adoption, it was not error for the chancellor to deny appellant's petition for child support from appellee. Office of Child Support Enforcement v. Lawrence, 57 Ark. App. 300, 944 S.W.2d 566 (1997), overruled in part, Hudson v. Kyle, 352 Ark. 346, 101 S.W.3d 202 (2003).

Adoption decree in favor of the mother and the adoptive father was proper because the biological father voluntarily, willfully, arbitrarily, and without adequate excuse failed to pay child support in excess of one year. The record further revealed that he had the opportunity to "cure" his failure to pay child support pursuant to subdivision (c)(2)(A) of this section, but he chose not to do so. Powell v. Lane, 375 Ark. 178, 289 S.W.3d 440 (2008).

### **Termination by Court Order.**

This section does not require a separate petition for termination of parental rights but allows the parental relationship to be terminated by a court order in connection with an adoption proceeding if the requisite grounds are satisfied. Wineman v. Brewer, 280 Ark. 527, 660 S.W.2d 655 (1983).

While the primary consideration in adoption proceeding is the welfare of the child, this does not mean that courts can sever the parental rights of nonconsenting parents and order adoption merely because the adoptive parents might be able to provide a better home. Lindsey v. Ketchum, 10 Ark. App. 128, 661 S.W.2d 453 (1983).

While the primary consideration is the welfare of the child, the court cannot sever the parental rights of nonconsenting parents and order adoption merely because the adoptive parents might be able to provide a better home. In re Milam, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

Termination of a father's parental rights to allow the adoption of his child by the stepfather was proper where the father, although paying some of the overdue child support once the adoption proceedings were commenced, made no effort to see the child because subsection (a) of this section not only required that an absent parent support his or her child, it also required that the absent parent establish a relationship with the child. Roberts v. Brown, 103 Ark. App. 1, 285 S.W.3d 716 (2008).

### **Unreasonable Withholding of Consent.**

Evidence sufficient to find that parent unreasonably withheld consent to child's adoption. Lindsey v. Ketchum, 10 Ark. App. 128, 661 S.W.2d 453 (1983); In re Titsworth, 11 Ark. App. 197, 669 S.W.2d 8 (1984).

Psychological studies of the natural father and evidence of his antisocial behavior prior to the birth of his child were admissible in determining whether he unreasonably withheld his consent to adoption contrary to the best interests of the child. In re K.M.C., 333 Ark. 95, 62 Ark. App. 95, 969 S.W.2d 197 (1998).

Record contained no showing that a father unreasonably withheld his consent to an adoption by a guardian where the father had no obligation to consent merely because he was incarcerated or because the guardian did not want to communicate or have the child exposed to him; further, even if the father had consented to the guardianship, he would not have forfeited his parental rights in so doing and, thus, the trial court's order granting the guardian's adoption petition and terminating the father's rights was reversed. Henderson v. Callis, 97 Ark. App. 163, 245 S.W.3d 174 (2006).

**Cited:** Temple v. Tucker, 277 Ark. 81, 639 S.W.2d 357 (1982); Loveless v. May, 278 Ark. 127, 644 S.W.2d 261 (1983); Lindsey v. Ketchum, 10 Ark. App. 128, 661 S.W.2d 453 (1983); In re Proposed Local Rules, 284 Ark. 133, 682 S.W.2d 452 (1984); Corley v. Arkansas Dep't of Human Servs., 46 Ark. App. 265, 878 S.W.2d 430 (1994); Vice v. Andrews, 328 Ark. 573, 945 S.W.2d 914 (1997); Batiste v. Ark. Dep't of Human Servs., 361 Ark. 46, 204 S.W.3d 521 (2005).

**9-9-221. Uniformity of interpretation.**

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History.** Acts 1977, No. 735, § 21;  
A.S.A. 1947, § 56-221.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Arkansas  
Law Survey, Waddell, Family Law, 7 U.  
Ark. Little Rock L.J. 229.

**9-9-222. Repeal and effective date.**

(a) The following acts and laws and parts of laws in conflict herewith are repealed as of the effective date of this subchapter:

- (1) Acts 1947, No. 369;
- (2) Acts 1953, No. 254;
- (3) Acts 1953, No. 265;
- (4) Acts 1969, No. 303, § 17.

(b) Any adoption or termination proceedings pending on the effective date of this subchapter are not affected thereby.

**History.** Acts 1977, No. 735, § 22.      was signed by the Governor on March 24,  
**Publisher's Notes.** Acts 1977, No. 735      1977, and took effect on July 6, 1977.

**9-9-223. Termination of rights of nonparental relatives.**

Except as provided in this subchapter with regard to parental rights, any rights to a child which a nonparental relative may derive through a parent or by court order may, if the best interests of the child so require, be terminated in connection with a proceeding for adoption or for termination of parental rights.

**History.** Acts 1985, No. 879, § 5; A.S.A.  
1947, § 56-222.

**9-9-224. Child born to unmarried mother.**

In all cases involving a child born to a mother unmarried at the time of the child's birth, the following procedure shall apply:

(a) Upon filing of the petition for adoption and prior to the entry of a decree for adoption a certified statement shall be obtained from the Putative Father Registry stating:

- (1) The information contained in the registry in regard to the child who is the subject of the adoption; or
- (2) That no information is contained in the registry at the time the petition for adoption was filed.

(b) When information concerning the child is contained in the Putative Father Registry at the time of the filing of the petition for adoption, notice of the adoption proceedings shall be served on the registrant unless waived by the registrant in writing signed before a notary public. All confidential information regarding the adoptive parents and the child to be adopted shall be removed from the notice prior to being served to the registrant. Service of notice under this section shall be given in accordance with the Arkansas Rules of Civil Procedure, except that notice by publication shall not be required.

(c) Upon receipt of notice, the registrant, if he wishes to appear and be heard, shall file a responsive pleading within the time limits set in the Arkansas Rules of Civil Procedure.

**History.** Acts 1989, No. 496, § 7; 1999, No. 1229, § 1.

RESEARCH REFERENCES

**Ark. L. Notes.** Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions: Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

CASE NOTES

ANALYSIS	
Grandparents. Putative Fathers.	
<b>Grandparents.</b> This section does not require that notice be given to the maternal grandparents of a child where the biological mother has consented to the adoption, and nothing in this statute applies to grandparents. Henry v. Buchanan, 364 Ark. 485, 221 S.W.3d 346 (2006).	tionship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. Escobedo v. Nickita, 365 Ark. 548, 231 S.W.3d 601 (2006).
<b>Putative Fathers.</b> Where the putative father and the child's mother had a brief romantic rela-	<b>Cited:</b> In re Reeves, 309 Ark. 385, 831 S.W.2d 607 (1992).

SUBCHAPTER 3 — CHILDREN IN PUBLIC CUSTODY — CONSENT TO ADOPTION

SECTION.	SECTION.
9-9-301. Adoptions under prior law validated.	titions for appointment of guardian.
9-9-302. [Repealed.]	9-9-304. [Repealed.]
9-9-303. Administrative reviewers of pe-	

**Preambles.** Acts 1977, No. 195 contained a preamble which read: "Whereas, Section 12 of Act 215 of 1911 set out a procedure whereby a guardian with power



to consent to adoption may consent to the legal adoption of a child in the State of Arkansas; and

"Whereas, Section 20 of Act 369 of 1947 authorized the Public Welfare Department to be appointed guardian of a child with power to consent to adoption in accordance with the procedures outlined in Section 12 of Act 21 of 1911; and

"Whereas, Act 451 of 1975 repealed Section 12 of Act 215 of 1911 and did not reenact Section 12 of Act 215 of 1911 into the new Juvenile Code of 1975 because the guardianship procedures were no longer a function of the Juvenile Court but a function of the Probate Court; and

"Whereas, the legislature had no intention of repealing the procedure that had been authorized in Arkansas under Section 12 of Act 215 of 1911; and

"Whereas, it is the intention of the legislature that the procedure for the appointment of a guardian with power to consent to adoption continue in this State; and

"Now therefore...."

**Effective Dates.** Acts 1985, No. 322, § 3: Mar. 12, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that Public Law 96-272 requires periodic dispositional reviews of the status of foster children; that there is a need for clarification of the manner in which these reviews shall be held; and that the enactment of this bill will clarify the manner in which reviews are to be held and will promote efficient operation of the courts and the necessary protection of

children in our State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 424, § 3: Mar. 20, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that Public Law 96-272 requires periodic dispositional reviews of the status of foster children; that there is a need for clarification of the manner in which these reviews shall be held; and that the enactment of this bill will clarify the manner in which reviews are to be held and will promote efficient operation of the courts and the necessary protection of children in our State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 778, § 4: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the custodial status of minor children involved in the adoption process in this State is of major significance to the Legislature and that this Act is designed to clarify this legal status and therefore should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### 9-9-301. Adoptions under prior law validated.

All adoptions that have been granted by the probate courts of this state under authority of Acts 1947, No. 369, § 7 [repealed], when the guardian appointed was appointed under the guardianship procedures outlined under Acts 1911, No. 215, § 12 [repealed] and Acts 1947, No. 369, § 20 [repealed], are confirmed and made valid.

**History.** Acts 1977, No. 195, § 4; A.S.A. 1947, § 56-129.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

## RESEARCH REFERENCES

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

**9-9-302. [Repealed.]**

**Publisher's Notes.** This section, concerning the authority to serve as guardian, was repealed by Acts 1989, No. 273, § 47. The section was derived from Acts 1977, No. 195, § 1; A.S.A. 1947, § 56-126; Acts 1987, No. 778, § 1.

**9-9-303. Administrative reviewers of petitions for appointment of guardian.**

(a) There shall be created within the Administrative Office of the Courts up to two (2) positions for the administration of reviews of the status of children for whom a petition has been filed or granted for appointment of a guardian with the power to consent to adoption or for termination of parental rights.

(b)(1) The persons appointed as administrative reviewers shall serve under the direction of the Director of the Administrative Office of the Courts and shall be appointed by the Chief Justice of the Supreme Court, conditioned upon the approval of the circuit judge in the affected area.

(2) The persons so appointed shall hold office at the pleasure of the Chief Justice and shall possess the same qualifications and shall be subject to the same restrictions as circuit judges.

(3) The persons so appointed shall receive such salaries as may be fixed by the biennial appropriations salary act for the Administrative Office of the Courts.

(4) The persons so appointed shall not engage, directly or indirectly, in the practice of law and shall hold no other office or employment.

(5) The persons so appointed shall, in addition to the functions set forth in this subsection, perform such additional duties as may be prescribed by the Chief Justice of the Supreme Court.

**History.** Acts 1977, No. 195, § 2; 1985, No. 322, § 1; 1985, No. 424, § 1; A.S.A. 1947, § 56-127; Acts 1987, No. 778, § 2; 1989, No. 273, § 47.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery

courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

## CASE NOTES

**Applicability.**

Where probate judge entered order terminating birth parent's parental rights on May 18, 1989, and specifically incorporated that authority of this section as a

basis for the order, Act 273 of 1989, which repealed subsections (a)-(e) of this section and became effective on August 1, 1989, did not affect the validity of the probate judge's final order because Act 273 was

not retrospective. *Goldsmith v. Arkansas Dep't of Human Servs.*, 302 Ark. 98, 787 S.W.2d 675 (1990).

**Cited:** *Watson v. Dietz*, 288 Ark. 111, 702 S.W.2d 407 (1986).

### 9-9-304. [Repealed.]

**Publisher's Notes.** This section, concerning the requirement of court findings, was repealed by Acts 1989, No. 273, § 47.

The section was derived from Acts 1977, No. 195, § 3; 1980 (1st Ex. Sess.), No. 66, § 1; A.S.A. 1947, § 56-128.

## SUBCHAPTER 4 — ARKANSAS SUBSIDIZED ADOPTION ACT

### SECTION.

- 9-9-401. Title.
- 9-9-402. Definitions.
- 9-9-403. Purpose.
- 9-9-404. Administration — Funding.
- 9-9-405. Promulgation of regulations.
- 9-9-406. Records confidential.
- 9-9-407. Eligibility.
- 9-9-408. Subsidy agreement required — Commencement of subsidy.

### SECTION.

- 9-9-409. Subsidy amounts.
- 9-9-410. Subsidy agreements — Duration.
- 9-9-411. Subsidy agreements — Renewal, termination, or modification.
- 9-9-412. Appeals.

**Preambles.** Acts 1979, No. 1109 contained a preamble which read: "Whereas, there are increasing numbers of children with special needs who are available for adoption but for whom Arkansas Social Services is unable to find adoptive homes because the children have physical, mental or emotional handicaps, or are children of minority groups, or older children, or are sibling groups that entail considerable expense on the part of adopting couples that adopting couples are unable to assume; and,

"Whereas, many children remain in institutional care or foster care at great cost to the state and at great human cost to the children because of the financial inability of adopting parents to adopt said children; and,

"Whereas, in recognition of the special problems of children, a subsidy program of adoption has been developed in many states in a way to qualify families assum-

ing permanent responsibility for these special children;

"Now therefore...."

**Effective Dates.** Acts 1985, No. 482, § 2: Mar. 21, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that changes in the circumstances affecting the adoptive parents who are eligible for subsidies under the provisions of Act 1109 of 1979 often necessitate adjustments in the amount of the subsidies approved in the final decree of adoption; and that the immediate passage of this Act is necessary to establish procedures for changing the amount of such subsidies in an expeditious manner to serve the needs of the adoptive parents and the child involved. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."



**9-9-401. Title.**

This subchapter shall be known and may be cited as the “Arkansas Subsidized Adoption Act” and includes only state-funded adoptions.

**History.** Acts 1979, No. 1109, § 8; A.S.A. 1947, § 56-137; Acts 1999, No. 945, § 4.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

**CASE NOTES**

**Cited:** *Batiste v. Ark. Dep’t of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

**9-9-402. Definitions.**

As used in this subchapter:

- (1) “Child” means a minor as defined by Arkansas law; and
- (2) “Special needs” means a child who is not likely to be adopted by reason of one (1) or more of the following conditions:
  - (A) The child has special needs for medical or rehabilitative care;
  - (B) Age;
  - (C) A racial or ethnic factor;
  - (D) A sibling relationship; or
  - (E) A child who is at high risk for developing a serious physical, mental, developmental, or emotional condition if documentation of the risk is provided by a medical professional specializing in the area of the condition for which the child is considered at risk.

**History.** Acts 1979, No. 1109, § 2; A.S.A. 1947, § 56-131; Acts 1999, No. 945, § 5; 2005, No. 437, § 7.

**Amendments.** The 2005 amendment rewrote this section.

**CASE NOTES****State Custody.**

Administrative law judge erred in finding that children were not in the state’s custody for adoption subsidy purposes because, although the children were in their aunt’s physical custody, the state maintained a supervisory role over the children

through the context of the protective-services case that remained open on the children until their parents’ rights were terminated. *Batiste v. Ark. Dep’t of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

**9-9-403. Purpose.**

The purpose of this subchapter is to supplement the Arkansas adoption statutes by making possible through public financial subsidy

the most appropriate adoption of each child certified by the Department of Human Services as requiring a subsidy to assure adoption.

**History.** Acts 1979, No. 1109, § 1; A.S.A. 1947, § 56-130.

#### CASE NOTES

**Cited:** *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

#### 9-9-404. Administration — Funding.

(a) The Department of Human Services shall establish and administer an ongoing program of subsidized adoption by persons who are determined by the department to be eligible to adopt under this subchapter and who are financially unable to otherwise adopt as determined by the department using a means-based test.

(b) Subsidies and services for children under this program shall be provided out of funds appropriated to the department for the maintenance of children in foster care or made available to it from other sources.

**History.** Acts 1979, No. 1109, § 3; A.S.A. 1947, § 56-132; Acts 2005, No. 437, § 8. substituted “as determined by the department using a means-based test” for “the child or children specified under § 9-9-402” in (a).

**Amendments.** The 2005 amendment

#### CASE NOTES

##### State Custody.

Administrative law judge erred in finding that children were not in the state's custody for adoption subsidy purposes because, although the children were in their aunt's physical custody, the state maintained a supervisory role over the children

through the context of the protective-services case that remained open on the children until their parents' rights were terminated. *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

#### 9-9-405. Promulgation of regulations.

The Department of Human Services may promulgate regulations consistent with this subchapter.

**History.** Acts 1979, No. 1109, § 7; A.S.A. 1947, § 56-136.

#### 9-9-406. Records confidential.

All records regarding subsidized adoption shall be confidential and may be opened for inspection only under the provisions of § 9-9-217.

**History.** Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133.

**9-9-407. Eligibility.**

(a) A family is initially eligible for a subsidy for purposes of adoption if:

(1)(A) No other potential adoptive family is willing and able to adopt the child without the use of a subsidy.

(B) In the case of a child who has established significant emotional ties with prospective adoptive parents while in their care as a foster child, the Department of Human Services may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy.

(C) In the case of a child who will be adopted by members of his or her biological family, the department may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy;

(2) The department has determined the family to be eligible pursuant to a means-based test;

(3) The child is in the custody of the department; and

(4) The child has been determined by the department to have special needs.

(b)(1) Annually, the department shall redetermine eligibility on each state adoption subsidy.

(2) A state adoption subsidy shall cease if the adoptive family is no longer:

(A) Eligible for the subsidy based on the means-based test; or

(B) Providing care and support for the adoptive child.

(c) A child who is a resident of Arkansas when eligibility for a subsidy is certified shall remain eligible and receive a subsidy, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption, or thereafter.

(d) A family is eligible for a legal subsidy for purposes of adoption if:

(1) The child is in the custody of the department; or

(2)(A) The child was in the custody of the department;

(B) Legal custody was transferred to a relative or other person; and

(C) The juvenile division case remains open pending the child obtaining permanency.

**History.** Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133; Acts 1999, No. 518, § 3; 2005, No. 437, § 9.

**Amendments.** The 2005 amendment rewrote (a); added present (b) and (d); and redesignated former (b) as present (c).

**9-9-408. Subsidy agreement required — Commencement of subsidy.**

(a) When parents are found and approved for adoption of a child certified as eligible for a subsidy and before the final decree of adoption is issued, there must be a written agreement between the family



entering into the subsidized adoption and the Department of Human Services.

(b)(1) Adoption subsidies, the amount of which in individual cases shall be determined through agreement between the adoptive parents and the department but shall be no more than the current foster care board rate, may commence with the adoption placement or at the appropriate time after the adoption decree and may vary with the circumstances of the adopting parents and the needs of the child as well as the availability of other resources to meet the child's needs.

(2)(A) State adoption subsidy agreements shall be for no more than one (1) year.

(B) The department shall redetermine eligibility each year as outlined in this subchapter and shall enter into an annual agreement only if the adoptive family remains eligible for an adoption subsidy.

(3)(A) In the case of the special needs child whose eligibility is based on a high risk for development of a serious physical, mental, developmental, or emotional condition, the adoption subsidy agreement shall provide for no adoption subsidy until the child actually develops the condition.

(B) No subsidy payment shall be made until adequate documentation is submitted by the adoptive parents to the department showing that the child has now developed the condition.

(C) Upon acceptance by the department that the child has developed the condition, the adoption subsidy shall be retroactive to the date the adoptive parents submitted adequate documentation that the child developed the condition.

(c)(1) When a child is determined to have a causative preexisting condition which was not identified or known prior to the final decree of adoption and which has resulted in a severe medical or psychiatric condition that requires extensive treatment, hospitalization, or institutionalization, an adoption subsidy may be approved.

(2) Upon the approval of the subsidy, the adoptive parents shall also be entitled to receive retroactive subsidy payments for the two (2) months prior to the date such subsidy was approved.

(3) This subsection will apply only to adoptive placements made on or after April 28, 1979.

**History.** Acts 1979, No. 1109, § 5; 1985, No. 482, § 1; A.S.A. 1947, § 56-134; Acts 1993, No. 800, § 1; 2005, No. 437, § 9[10].

**Amendments.** The 2005 amendment

redesignated former (b) as present (b)(1); inserted "but shall be no more than the current foster care board rate" in (b)(1); and added (b)(2) and (b)(3).

### 9-9-409. Subsidy amounts.

(a) The amount of the subsidy may be readjusted periodically with the concurrence of the adopting parents, which may be specified in the adoption subsidy agreement, depending upon a change in circumstances.

(b) The subsidy may be for special services not covered by any other available resource, which include health or education services. To ensure the services remain appropriate, the services will be reviewed periodically.

(c) The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for the child under foster family care or, in the case of a special service, the reasonable fee for the service rendered.

**History.** Acts 1979, No. 1109, § 5;  
1985, No. 482, § 1; A.S.A. 1947, § 56-134;  
Acts 1999, No. 945, § 6.

### **9-9-410. Subsidy agreements — Duration.**

(a) The subsidy agreement shall be binding and constitute an obligation against the State of Arkansas until the adopted child reaches the age of eighteen (18) years or the benefits available to him or her under the subsidy agreement are provided by other state or federal programs or the adoptive parents no longer qualify for a subsidy under the current rules and regulations for subsidized adoptions.

(b) If funding for the subsidized program is discontinued, all contracts that have been executed under this section and §§ 9-9-408 and 9-9-411 shall continue to be honored and shall be a valid claim against the State of Arkansas in keeping with the original subsidy agreement as long as eligibility for the subsidy continues under § 9-9-411.

(c) The subsidy agreement may be extended until the age of twenty-one (21) years if the child has a documented disability or condition that prevents the child from existing independently from the adoptive family. To be eligible for the extended subsidy, the family of the child must have applied for supplemental security income benefits prior to the child's turning eighteen (18) years and have been denied.

**History.** Acts 1979, No. 1109, § 4;  
1981, No. 858, § 1; A.S.A. 1947, § 56-133;  
Acts 1999, No. 945, § 7.

### **9-9-411. Subsidy agreements — Renewal, termination, or modification.**

(a)(1) When subsidies are for more than one (1) year, the adoptive parents shall present an annual sworn certification that the adoptive child remains under their care and that the condition that caused the child to be certified continues to exist.

(2) The subsidy agreement may be continued in accordance with the terms by entering into a new agreement each year but only as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues, except that, in the absence of other appropriate resources provided by law and in accordance with Arkansas

regulations, it may not be continued after the adopted child reaches majority.

(b) Termination or modification of the subsidy agreement may be requested by the adoptive parents at any time.

**History.** Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133.

### 9-9-412. Appeals.

Any subsidy decision by the Department of Human Services which the placement agency or the adoptive parents deem adverse to the child shall be reviewable according to the provisions of § 20-76-408.

**History.** Acts 1979, No. 1109, § 6; A.S.A. 1947, § 56-135.

## CASE NOTES

**Cited:** *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

## SUBCHAPTER 5 — VOLUNTARY ADOPTION REGISTRY

### SECTION.

9-9-501. Definitions.

9-9-502. Penalty.

9-9-503. Registry — Establishment and maintenance.

9-9-504. Registry — Operation.

### SECTION.

9-9-505. Compilation of nonidentifying history.

9-9-506. Disclosure of information.

9-9-507. Maintenance of records.

9-9-508. Rules and regulations.

**Effective Dates.** Acts 2003, No. 650, § 9: Mar. 25, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that federal law only allows the Federal Bureau of Investigation to release criminal history records to certain entities, which does not include private entities as currently permitted under state law. The Department of Arkansas State Police entered into an agreement with the Federal Bureau of Investigation regarding federal fingerprint-based criminal record checks, which permits disclosure only as allowed by federal law, with a grace period from the Federal Bureau of

Investigation to correct state law no later than May 1, 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."



**9-9-501. Definitions.**

As used in this subchapter:

(1) "Adoptee" means a person who has been legally adopted in this state;

(2) "Administrator" means the person charged with maintenance and supervision of the registry and may include the administrator's agents, employees, and designees;

(3) "Adoption" means the judicial act of creating the relationship of parent and child when it did not exist previously;

(4) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption;

(5) "Adult" means a person eighteen (18) or more years of age;

(6) "Agency" means any public or voluntary organization licensed or approved pursuant to the laws of any jurisdiction within the United States to place children for adoption;

(7) "Birth parent" means:

(A) The man or woman deemed or adjudicated under laws of a jurisdiction of the United States to be the father or mother of genetic origin of a child; or

(B)(i) A putative father of a child if his name appears on the original sealed birth certificate of the child or if he has been alleged by the birth mother to be and has in writing acknowledged being the child's biological father.

(ii) A putative father who has denied or refused to admit paternity shall be deemed not to be a birth parent in the absence of an adjudication under the laws of a jurisdiction of the United States that he is the biological father of the child;

(8) "Genetic and social history" means a comprehensive report, when obtainable, on the birth parents, siblings of the birth parents, if any, other children of either birth parent, if any, and any parents of the birth parents, that shall contain the following information:

(A) Medical history;

(B) Health status;

(C) Cause of and age at death;

(D) Height, weight, eye color, and hair color;

(E) When appropriate, levels of educational and professional achievement;

(F) Ethnic origins; and

(G) Religion, if any;

(9) "Health history" means a comprehensive report of the child's health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological, and medical care history;

(10) "Mutual consent voluntary adoption registry" or "registry" means a place provided for in this subchapter where eligible persons may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this subchapter; and

(11) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the father of genetic origin of a child who claims or is alleged to be the father of genetic origin of the child.

**History.** Acts 1985, No. 957, § 1; A.S.A. 1947, § 56-138; Acts 1987, No. 1060, § 1; 2003, No. 650, § 5.

### RESEARCH REFERENCES

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

**U. Ark. Little Rock L. Rev.** Note: Family Law-Putative Fathers and the Presumption of Legitimacy-Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights

of Putative Fathers in Arkansas, 25 U. Ark. Little Rock L. Rev. 369.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

### CASE NOTES

**Cited:** In re J.L.T., 31 Ark. App. 85, 788 S.W.2d 494 (1990).

### 9-9-502. Penalty.

(a)(1) No person, agency, entity, or organization of any kind, including, but not limited to, any officer or employee of this state and any employee, officer, or judge of any court of this state shall disclose any confidential information relating to any adoption, except as provided by statute or pursuant to a court order.

(2) Any employer who knowingly or negligently allows any employee to disclose information in violation of this subchapter shall be subject to the penalties provided in subsection (b) of this section, together with the employee who made any disclosure prohibited by this subchapter.

(b) Any person, agency, entity, or organization of any kind that discloses information in violation of this subchapter shall be guilty of a Class A misdemeanor.

**History.** Acts 1985, No. 957, § 3; A.S.A. 1947, § 56-140; Acts 1987, No. 1060, § 2.

**Cross References.** Sentence to imprisonment, § 5-4-401.

### 9-9-503. Registry — Establishment and maintenance.

(a)(1) A mutual consent voluntary adoption registry may be established and maintained by any licensed voluntary agency involved in an adoption.

(2) Persons eligible to receive identifying information shall work through the agency involved in the adoption. If that agency has merged or ceased operations, a successor agency may assume possession of the files for the purpose of establishing, maintaining, and operating the

mutual consent voluntary adoption registry concerning those adoptions.

(3) Any licensed voluntary agency may delegate or otherwise contract with another licensed voluntary agency with expertise in post-legal adoption services to establish, maintain, and operate the registry for the delegating agency.

(4) If any agency ceasing to operate does not transfer adoption records to another licensed agency, it shall provide all records required to be maintained by law to the Department of Human Services.

(b) The department shall establish and maintain a mutual consent voluntary adoption registry for all adoptions arranged by the department or may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing postlegal adoption services, in which case the agency shall establish and maintain the registry that would otherwise be operated by the department.

(c) The department shall keep records of every adult adoptee and birth parent reunited through the use of the mutual consent voluntary adoption registry.

**History.** Acts 1985, No. 957, § 6; A.S.A. 1947, § 56-143; Acts 1987, No. 1060, § 4; 2001, No. 409, § 2.

#### **9-9-504. Registry — Operation.**

(a)(1) The adult adoptee and each birth parent and each individual related within the second degree whose identity is to be disclosed may voluntarily place his or her name in the appropriate registry by submitting a notarized affidavit stating his or her name, address, and telephone number and his or her willingness to be identified solely to the other relevant persons who register.

(2) No registration shall be accepted until the prospective registrant submits satisfactory proof of his or her identity in accord with regulations specified in § 9-9-503.

(3) The failure to file a notarized affidavit with the registry for any reason, except death, shall preclude the disclosure of identifying information to those persons who do register.

(b)(1)(A) Upon registering, the registrant shall participate in not less than one (1) hour of counseling with a social worker employed by the entity that operates the registry. If a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry.

(B) If a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry.

(2) When an eligible person registers concerning an adoption that was arranged through an agency that has not merged or otherwise



ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify, by certified mail within ten (10) business days after the date of registration, the agency that handled the adoption.

(c) In any case in which the identity of the birth father was unknown to the birth mother, or in which the administrator learns that one (1) or both birth parents are deceased, this information shall be shared with the adult adoptee. In those cases, the adoptee shall not be able to obtain identifying information through the registry, and he or she shall be told of his or her right to pursue whatever right otherwise exists by law to petition a court to release the identifying information.

(d) The following shall be matching and disclosure procedures:

(1) Each mutual consent voluntary adoption registry shall be operated under the direction of an administrator;

(2) The administrator shall be bound by the confidentiality requirements of this subchapter and shall be permitted reasonable access to the registry for the purposes set forth in this subchapter and for such purposes as may be necessary for the proper administration of the registry;

(3) A person eligible to register may request the administrator to disclose identifying information by filing an affidavit that sets forth the following:

(A) The current name and address of the affiant;

(B) Any previous name by which the affiant was known;

(C) The original and adopted names, if known, of the adopted child;

(D) The place and date of birth of the adopted child; and

(E)(i) The name and address of the adoption agency or other entity, organization, or person placing the adopted child, if known. The affiant shall notify the registry of any change in name or location which occurs subsequent to his or her filing the affidavit. The registry shall have no duty to search for the affiant who fails to register his or her most recent address;

(ii) The affiant shall notify the registry of any change in name or location that occurs subsequent to his or her filing the affidavit. The registry shall have no duty to search for the affiant who fails to register his or her most recent address;

(iii) The registry shall have no duty to search for the affiant who fails to register his or her most recent address;

(4)(A) The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents or individuals related within the second degree. The processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match.

(B) The processing shall include research from agency records, when available, and when agency records are not available, research

from court records to determine conclusively whether the affiants match;

(5) The administrator shall determine that there is a match when the adult adoptee and a birth parent or individual related within the second degree have filed affidavits with the mutual consent voluntary adoption registry and have each received the counseling required in subsection (b) of this section; and

(6)(A) An agency receiving an assignment of a match under the provisions of this subchapter shall directly or by contract with a licensed adoption agency in this state notify all registrants through a direct and confidential contact.

(B) The contact shall be made by an employee or agent of the agency receiving the assignment.

(C) The employee or agent shall be a trained social worker who has expertise in postlegal adoption services.

(e)(1) Any affidavits filed and other information collected shall be retained for ninety-nine (99) years following the date of registration.

(2) Any qualified person may choose to remove his or her name from the registry at any time by filing a notarized affidavit with the registry.

(f)(1) A mutual consent voluntary adoption registry shall obtain only information necessary for identifying registrants.

(2) In no event shall the registry obtain information of any kind pertaining to the adoptive parents or any siblings to the adult adoptee who are children of the adoptive parents.

(g) All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through users' fees charged to all persons who register.

(h) Beginning January 1, 2002, the Department of Human Services shall place the affidavit form for placement on the mutual adoption registry on the department's website.

**History.** Acts 1985, No. 957, § 7; A.S.A. 1947, § 56-144; Acts 1987, No. 1060, §§ 5, 6; 2001, No. 409, § 1; 2003, No. 650, § 6.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Family Law, Uniform Adoption Legislation, 2003 Arkansas General As- Act, 26 U. Ark. Little Rock L. Rev. 408.

## 9-9-505. Compilation of nonidentifying history.

(a) Prior to placement for adoption, the licensed adoption agency or, when an agency is not involved, the person, entity, or organization handling the adoption shall compile and provide to the prospective adoptive parents a detailed, written health history and genetic and social history of the child that excludes information that would identify birth parents or members of a birth parent's family and that shall be set forth in a document that is separate from any document containing such identifying information.

(b) Records containing the nonidentifying information and that are set forth on a document that is separate from any document containing identifying data:

(1)(A) Shall be retained by the agency or, when no agency is involved, by the person, entity, or organization handling the adoption, for ninety-nine (99) years.

(B)(i) If the agency or person, entity, or organization who handled the adoption ceases to function, that agency or intermediary shall transfer records containing the nonidentifying information on the adoptee to the Department of Human Services.

(ii) However, a licensed agency ceasing operation may transfer the records to another licensed agency within this state, but only if the agency transferring the records gives notice of the transfer to the department; and

(2) Shall be available upon request throughout the time specified in subdivision (b)(1) of this section, together with any additional nonidentifying information that may have been added on health or on genetic and social history, but which excludes information identifying any birth parent or member of a birth parent's family or the adoptee or any adoptive parent of the adoptee, to the following persons only:

(A) The adoptive parents of the child or, in the event of death of the adoptive parents, the child's guardian;

(B) The adoptee;

(C) In the event of the death of the adoptee, the adoptee's children, the adoptee's widow or widower, or the guardian of any child of the adoptee;

(D) The birth parent of the adoptee; and

(E) Any child welfare agency having custody of the adoptee.

(c) The actual and reasonable cost of providing nonidentifying health history and genetic and social history shall be paid by the person requesting the information.

**History.** Acts 1985, No. 957, § 8; A.S.A. 1947, § 56-145; Acts 1987, No. 1060, § 7; 2003, No. 650, § 7.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Family Law, Uniform Adoption Legislation, 2003 Arkansas General As- Act, 26 U. Ark. Little Rock L. Rev. 408.

### 9-9-506. Disclosure of information.

(a) Notwithstanding any other provision of law, the information acquired by any registry shall not be disclosed under any sunshine or freedom of information legislation, rules, or practice.

(b) Notwithstanding any other provision of law, no person, group of persons, or entity, including any agency, may file a class action to force the registry to disclose identifying information.



(c) In exceptional circumstances, specified papers and records pertaining to particular adoptions may be inspected by the adoptee, the adoptive parents, and the birth parents if the court granting the adoption finds by clear and convincing evidence that good cause exists for the inspection.

**History.** Acts 1985, No. 957, § 4; A.S.A. 1947, § 56-141.

### **9-9-507. Maintenance of records.**

All records of any adoption finalized in this state shall be maintained for ninety-nine (99) years by the agency, entity, organization, or person arranging the adoption.

**History.** Acts 1985, No. 957, § 2; A.S.A. 1947, § 56-139.

### **9-9-508. Rules and regulations.**

The Department of Human Services shall issue such rules and regulations as are necessary for implementing this subchapter.

**History.** Acts 1985, No. 957, § 5; A.S.A. 1947, § 56-142; Acts 1987, No. 1060, § 3.

## **SUBCHAPTER 6 — LEGAL REPRESENTATION**

### **SECTION.**

9-9-601. The Governor's Pro Bono Adoption Service Award.

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**Cross References.** Attorneys-at-Law, § 16-22-101 et seq.

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### **9-9-601. The Governor's Pro Bono Adoption Service Award.**

(a) The Governor shall award the Governor's Pro Bono Adoption Service Award by proclamation in recognition of the efforts and sacrifice of those attorneys who provide adoption services on a volunteer basis.

(b) Those receiving the Governor's Pro Bono Adoption Service Award shall be selected from a list of names that may be submitted annually to the Governor by judges, attorneys, the Department of Human Services, and other related organizations, agencies, and professional associations.

**History.** Acts 2001, No. 1273, § 1.

**SUBCHAPTER 7 — THE STREAMLINE ADOPTION ACT****SECTION.**

9-9-701. Streamlined adoptions by the Department of Human Services.

**SECTION.**

9-9-702. Fast-tracked adoption of Garrett's Law babies.

**9-9-701. Streamlined adoptions by the Department of Human Services.**

(a)(1) A family who adopts a child from the Department of Human Services shall be eligible for the streamlined adoption process if the family chooses to adopt another child from the department and the department selects the family to be the adoptive parents of a child in the custody of the department.

(2) The adoptive family is not eligible for the streamlined adoption process if more than five (5) years have passed since the adoptive family finalized the adoption of a child placed by the department in the adoptive home.

(b) Upon contact by the adoptive family, the department shall:

(1)(A) Obtain a copy of the original home study completed on the adoptive family.

(B) If needed, the department shall unseal the adoption file from the previous adoption pursuant to § 9-9-217(a) in order to obtain a copy of the original home study on the adoptive family; and

(2) Complete an update to the original home study within forty-five (45) business days from contact by the adoptive family.

(c) The adoptive family shall be required to obtain updated criminal background checks and central registry checks as outlined in this chapter.

(d) The department shall not require the adoptive family to attend training.

(e) The department shall place the adoptive family in the pool of waiting adoptive families eligible to adopt a child from the department upon:

(1) Completion of the updated home study that is favorable; and

(2) Receipt of the:

(A) Criminal background check; and

(B) Central registry check.

(f)(1) A family who has a foster child in its home who was placed by the department shall be eligible for the streamlined adoption process if the department selects the foster family to be the adoptive family of the foster child.

(2) Upon selection, the department shall complete the adoptive home study within forty-five (45) business days.

(3) The department shall not require the foster family to attend training.

**History.** Acts 2005, No. 1685, § 1; 2007, No. 539, § 6.

**Amendments.** The 2007 amendment added "and the department selects the

family to be the adoptive parents of a child in the custody of the department" at the end of (a)(1); deleted former (b) and redesignated the remaining subsections accordingly; deleted "and if one (1) year has

passed since placement of a child in the adoptive home" in present (b); and, in (f)(1), substituted "foster family" for "family's parents" and "family" for "parents."

### **9-9-702. Fast-tracked adoption of Garrett's Law babies.**

(a) As used in this section, "newborn" means an infant who is thirty (30) days of age or younger.

(b) If a report of neglect under § 12-18-103(13)(B) is made to the Arkansas State Police Child Abuse Hotline, the mother has the option to place the newborn for:

(1) Adoption through a licensed child placement agency as defined in § 9-28-402(7); or

(2) A private adoption with a person licensed to practice medicine or law.

(c) If a newborn is taken into the custody of the Department of Human Services as the result of a call to the hotline of neglect under § 12-18-103(13)(B), the mother has the option to place the newborn for:

(1) Adoption through a licensed child placement agency under § 9-28-402(7); or

(2) A private adoption with a person licensed to practice medicine or law.

(d)(1)(A) If the proposed adoptive family has not completed the adoptive home study process, including the required criminal background check, the newborn shall be placed in a foster home that is licensed and approved under § 9-28-401 et seq. or in the custody of the department.

(B) The newborn shall remain in a licensed or approved foster home or in the custody of the department until the required home study and criminal background checks are completed on the proposed adoptive parents.

(2) If the newborn is in the custody of the department, an order transferring custody to the proposed adoptive parents is required before the newborn is placed in the home of the proposed adoptive parents.

(3) If the newborn is in the custody of the department, any petition for adoption shall be filed in the open dependency-neglect case.

(4) The adoption shall be granted only if the proposed adoptive placement is in the best interests of the newborn.

(e)(1)(A) If the mother wishes for a relative to adopt her newborn, the newborn shall be placed in a foster home that is licensed and approved under § 9-28-401 et seq. or in the custody of the department unless the relative has a completed approved adoptive home study at the time placement is needed.

(B) If a home study has not been completed on the relative, an adoptive home study shall be completed on the proposed relative if the proposed relative is an appropriate placement for the newborn.

(C) The home study on the relative cannot be waived.



(2) The adoption by a relative of the newborn shall be denied unless:

(A) The proposed relative adoptive parents have an approved adoptive home study or the department approves the proposed relative adoptive parents to adopt under state law on adoption, child welfare agency licensing law and regulations, and department policy and procedures;

(B) The court determines the proposed relative adoptive parents have the capacity and willingness to abide by orders regarding care, supervision, and custody so that child protection will not be an issue if the adoption is granted; and

(C) The court enters an order describing the level of contact, if any, which is permitted to occur between the birth parent and the proposed relative adoptive parents and the consequences for violation of the order of contact under § 5-26-502.

(f) The department shall remain involved in each placement that is made under this section to monitor whether the mother withdraws her consent to the adoption.

(g) If the mother withdraws her consent to the adoption, the department shall initiate an action to ensure the protection of the child, including without limitation, taking the child into custody if custody is warranted to protect the health and safety of the child.

**History.** Acts 2007, No. 381, § 1; 2009, No. 474, § 1; 2009, No. 758, § 8.

**A.C.R.C. Notes.** Acts 2009, No. 758, § 29, provided: "The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749."

**Amendments.** The 2009 amendment

by No. 474 inserted (a), (d), and (e), redesignated the remaining subsections accordingly, and made minor stylistic changes.

The 2009 amendment by No. 758 substituted "§ 12-18-103(13)(B)" for "§ 12-12-503(12)(B)" in the introductory language of (b) and (c).

## CHAPTER 10

### PATERNITY

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARTIFICIAL INSEMINATION.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**Effective Dates.** Acts 1991, No. 1095, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the effective-

ness of this act on July 1, 1991, is essential to the operation of the child support collection system in this state and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 396, § 7: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that a smooth transition

from current requirements to those of this Act requires that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 25A C.J.S., Dead Bds, § 4.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.  
9-10-101. [Repealed.]  
9-10-102. Actions governed by Arkansas Rules of Civil Procedure — Limitations periods — Venue — Summons — Transfer between local jurisdictions.  
9-10-103. Temporary orders — Administrative orders for paternity testing.  
9-10-104. Suit to determine paternity of child born outside of marriage.  
9-10-105. Trial by court.  
9-10-106. [Repealed.]  
9-10-107. [Repealed.]  
9-10-108. Paternity test.  
9-10-109. Child support following finding of paternity.

- SECTION.  
9-10-110. Judgment for lying-in expenses — Commitment on failure to pay.  
9-10-111. Judgment for child support — Bond.  
9-10-112. Income withholding — Delinquent noncustodial parent.  
9-10-113. Custody of child born outside of marriage.  
9-10-114. Visitation rights of father.  
9-10-115. Modification of orders or judgments.  
9-10-116. [Repealed.]  
9-10-117. [Repealed.]  
9-10-118. [Superseded.]  
9-10-119. Revival of judgment.  
9-10-120. Effect of acknowledgment of paternity.

**Preambles.** Acts 1983, No. 437 contained a preamble which read: "Whereas, it has been brought to the attention of the Arkansas General Assembly that Section 1 of Act 473 of 1981 (Ark. Stat. 34-705.1) erroneously refers to spouses in a proceeding brought pursuant to the Bastardy Statutes, causing uncertainty in said statutes;

"Now therefore...."

**Cross References.** Competent witnesses, § 16-43-901.

**Effective Dates.** Acts 1875 (Adj. Sess.), No. 24, § 12: effective on passage.

Acts 1879, No. 72, § 5: effective on passage.

Acts 1927, No. 111, § 2: effective on passage.

Acts 1955, No. 127, § 4: Mar. 2, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that the courts of this State are called upon to render decisions in matters involving the paternity of children and that the immediate passage of this Act is necessary to provide the courts with a means of expediting such cases. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 374, § 4: Mar. 24, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the laws of this State relating to bastardy proceedings are not in conformity with the modern court procedure of this State; that as a result, general confusion exists in the courts of this State; that this Act seeks to modernize these bastardy laws to conform to present court procedure. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1983, No. 177, § 2: Feb. 15, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the present Arkansas law governing non-support is constitutionally suspect on equal protection grounds; that there is an immediate need to remedy this law by legislative action. Therefore, an emergency is hereby declared to exist and this Act being necessary for the public peace, health and safety shall be full force and effect from and after its passage and approval."

Acts 1985, No. 988, § 6: Aug. 1, 1985.

Acts 1987, No. 599, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for clarification as to what fees are permitted to be charged for support collection throughout the state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 948, § 10: Mar. 27, 1989, except §§ 1, 2, and 5 effective Oct. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient manner for all children of this state; that

new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of this act to become effective October 1, 1989."

Acts 1991, No. 986, § 5: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that paternity of the children be established in the most expedient manner for all children of this state; and the smooth transition from current requirements of those of this act require the provisions to become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1091, § 7: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that Arkansas law governing voluntary paternity acknowledgments does not conform with current federal requirements set forth in Title IV-D of the Social Security Act; that failure to immediately remedy the law by legislative action will place Title IV-D and Aid to Families With Dependent Children funding in jeopardy. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## RESEARCH REFERENCES

**A.L.R.** Right of indigent defendant in paternity suit to have assistance of counsel at state expense. 4 A.L.R.4th 363.

Statute limiting time for commencement of action as violating child's constitutional rights. 16 A.L.R.4th 926.



Illegitimate child's right to maintain action to determine paternity. 19 A.L.R.4th 1082.

Human Leukocyte Antigen (HLA) tissue typing tests: admissibility, weight, and sufficiency in paternity cases. 37 A.L.R.4th 167.

Admissibility and weight of blood-grouping tests in disputed paternity cases. 43 A.L.R.4th 579.

Right to jury trial in paternity proceedings. 51 A.L.R.4th 565.

Necessity or propriety of appointment of independent guardian for child who is subject of paternity proceeding. 70 A.L.R.4th 1033.

Validity and construction of surrogate parenting agreement. 77 A.L.R.4th 70.

Admissibility of DNA identification evidence. 84 A.L.R.4th 313.

Parental rights of man who is not biological or adoptive father of child but was husband or cohabitant of mother when child was conceived or born. 84 A.L.R.4th 655.

Admissibility or compellability of blood test to establish testee's nonpaternity for purpose of challenging testee's parental rights. 87 A.L.R.4th 572.

Rights of an unwed father to obstruct adoption of his child by withholding con-

sent. 61 A.L.R.5th 151.

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content. 77 A.L.R.5th 201.

**Am. Jur.** 10 Am. Jur. 2d, Bastards, § 1 et seq.

**Ark. L. Rev.** Some Problems of Courts for Children in Arkansas, 9 Ark. L. Rev. 23.

Bastardy, 9 Ark. L. Rev. 391.

Legitimacy and Paternity, 14 Ark. L. Rev. 55.

Fuqua, Comments: Bastardy Law in Arkansas — The Need for Revision, 33 Ark. L. Rev. 178.

Note, How a State's Interests in a Child's Welfare Are Frustrated by Indiscriminate Application of the Final Judgment Rule: Arkansas Department of Human Services v. Lopez, 44 Ark. L. Rev. 895.

**C.J.S.** 10 C.J.S., Bastards, § 1 et seq.

**U. Ark. Little Rock L.J.** Sullivan, The Need for a Business or Payroll Records Affidavit for Use in Child Support Matters, 11 U. Ark. Little Rock L.J. 651.

Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

## CASE NOTES

### Children Born Out of Wedlock.

Neither Lord Mansfield's Rule, which provides that the declarations of a father or mother cannot be admitted to bastardize the issue born after marriage, nor the presumption of legitimacy of children

born during the wedlock of two persons, apply where the child is born out of wedlock. Dunn v. Davis, 291 Ark. 492, 725 S.W.2d 853 (1987).

**Cited:** Hall v. Freeman, 327 Ark. 148, 936 S.W.2d 761 (1997).

## 9-10-101. [Repealed.]

**Publisher's Notes.** This section, concerning jurisdiction and judges of chancery courts, was repealed by Acts 2003, No. 1185, § 9. The section was derived

from Acts 1875 (Adj. Sess.), No. 24, § 1, p. 25; C. & M. Dig., § 772; Pope's Dig., § 928; A.S.A. 1947, § 34-701; Acts 1989, No. 725, § 3.

## 9-10-102. Actions governed by Arkansas Rules of Civil Procedure — Limitations periods — Venue — Summons — Transfer between local jurisdictions.

(a) An action to establish the paternity of a child or children shall be commenced and proceed under the Arkansas Rules of Civil Procedure

applicable in circuit court, as amended from time to time by the Supreme Court.

(b) Actions brought in the State of Arkansas to establish paternity may be brought at any time. Any action brought prior to August 1, 1985, but dismissed because of a statute of limitations in effect prior to that date, may be brought for any person for whom paternity has not yet been established.

(c) Venue of paternity actions shall be in the county in which the plaintiff resides or, in cases involving a juvenile, in the county in which the juvenile resides.

(d) Summons may be issued in any county of this state in which the defendant may be found.

(e)(1) Upon a default by the defendant, the court shall grant a finding of paternity and shall establish a child support order based on an application in accordance with the Arkansas Rules of Civil Procedure and the family support chart.

(2) The court's granting of a default paternity judgment shall be based on the presumed mother's affidavit of facts in which the presumed mother names the defendant as the father of her child and states the defendant's access during the probable period of conception.

(f)(1)(A) The court where the final decree of paternity is rendered shall retain jurisdiction of all matters following the entry of the decree.

(B)(i) If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the court that entered the final adjudication to request that the case be transferred to another county.

(ii) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(iii) If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

(2) If the court that entered the final adjudication agrees to transfer the case to another judicial district, upon proper motion and affidavit and notice and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of the court in the county where the case is being transferred.

(3) An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate, have been notified in writing that a request has been made to transfer the case.

(4) Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

(5) The clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 2, p. 25; 1879, No. 72, § 1, p. 95; C. & M. Dig., § 773; Pope's Dig., § 929; Acts 1955, No. 127, § 2; 1983, No. 595, § 1; 1985, No. 988, § 1; A.S.A. 1947, §§ 34-702, 34-705.2; Acts 1989, No. 725, § 1; 1995, No. 1184, § 42; 1997, No. 1296, § 3; 1999, No. 539, § 2; 2003, No. 1185, § 10.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

**U. Ark. Little Rock L. Rev.** Note:

Family Law-Putative Fathers and the Presumption of Legitimacy-Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights of Putative Fathers in Arkansas, 25 U. Ark. Little Rock L. Rev. 369.

## CASE NOTES

### ANALYSIS

Constitutionality.

Purpose.

Child Support.

Dismissal.

Jury Trial.

Nature of Action.

Res Judicata.

Venue.

### Constitutionality.

This section is constitutional. *Dobson v. State*, 69 Ark. 376, 63 S.W. 796 (1901).

### Purpose.

Indemnity and protection of the counties against the burden of supporting the illegitimate child, and not the punishment of the father, are the objects contemplated by the statute. *Chambers v. State*, 45 Ark. 56 (1885).

### Child Support.

By common law the mother and not the father of an illegitimate child is bound to support him, but this section confers on the mother of the child the right to compel the father to contribute to its support; and a promise on the father's part to contribute to the child's support is a valid legal liability and is enforceable against him or, after his death, against his estate. *Davis'*

*Estate v. Herrington*, 53 Ark. 5, 13 S.W. 215 (1890).

In an action to enforce an unwritten promise to support and for annual payments, the recovery is limited to the last three years. *Davis' Estate v. Herrington*, 53 Ark. 5, 13 S.W. 215 (1890) (decision prior to 1985 amendment).

The mother may enforce an implied obligation of father to support illegitimate child. *Scott v. State*, 173 Ark. 625, 292 S.W. 979 (1927).

### Dismissal.

Because a dismissal with prejudice is void in a paternity action, such a ruling does not bar future proceedings. *State Office of Child Support Enforcement v. Flowers*, 57 Ark. App. 223, 944 S.W.2d 558 (1997).

### Jury Trial.

Since a paternity proceeding was essentially an action at law for the recovery of money, the appellant was entitled to a jury trial on the issues of fact. *Waddell v. State*, 235 Ark. 293, 357 S.W.2d 651 (1962).

### Nature of Action.

Although a paternity proceeding is in the name of the state, it is of a civil nature. *Chambers v. State*, 45 Ark. 56 (1885); *Pearce v. State*, 55 Ark. 387, 18



S.W. 380 (1892); *Wimberly v. State*, 90 Ark. 514, 119 S.W. 668 (1909); *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *State ex rel. Woolems v. Davis*, 178 Ark. 692, 11 S.W.2d 479 (1928); *Swaim v. State*, 184 Ark. 1107, 44 S.W.2d 1098 (1932).

#### **Res Judicata.**

Decision in an annulment proceeding brought on the ground of false representation as to paternity of child is not res judicata in either a paternity or heirship action, as child is not a party privy to the annulment proceeding. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

#### **Venue.**

In a proceeding to determine the custody of a child after his mother died, venue was not proper in the county in which the father resided; instead, venue was proper in the county in which the

child had resided with his mother and in which he was cared for after her death by his grandparents. *Overton v. Jones*, 74 Ark. App. 122, 45 S.W.3d 427 (2001).

Trial court erred in granting mother's motion to transfer a custody action because there was evidence that the father never established a residence outside of the first county, as contemplated by subdivision (f)(1)(B)(i) of this section. *Stephens v. Miller*, 91 Ark. App. 253, 209 S.W.3d 452 (2005).

**Cited:** *George v. George*, 247 Ark. 17, 444 S.W.2d 62 (1969); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Fuller v. Robinson*, 279 Ark. 252, 650 S.W.2d 585 (1983); *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985); *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

### **9-10-103. Temporary orders — Administrative orders for paternity testing.**

(a) If the child is not born when the accused appears before the circuit court, the court may hear evidence and may make temporary orders and findings pending the birth of the child.

(b)(1)(A) If the parentage of a child has not been established, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall send a notice to the putative father, or mother, as appropriate, that he or she is a biological parent of the child.

(B) The notice shall inform the parties that the putative father and the mother of the child may sign an affidavit acknowledging paternity and that any party may request that scientifically accepted paternity testing be conducted to assist in determining the identities of the child's parents.

(2)(A) In all cases brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., upon sworn statement of the mother, putative father, or the office alleging paternity, the office shall issue an administrative order for paternity testing that requires the mother, putative father, and minor child to submit themselves for paternity testing.

(B) The office shall cause a copy of the administrative order for paternity testing to be served on the mother and putative father.

(C) Paternity testing accomplished pursuant to an administrative order shall be conducted pursuant to the guidelines and procedures set out in § 9-10-108.

(D) Any party to an administrative order for paternity testing may object to the administrative order within twenty (20) days after receiving the order and request an administrative hearing to deter-

mine if paternity testing under the administrative order should be conducted by the office.

(3) The request for paternity testing shall be accompanied by:

(A) An affidavit alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the mother and putative father; or

(B) An affidavit denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the mother and putative father.

(4)(A) The office shall initially pay the costs of administrative paternity testing, but those costs shall be assessed against the putative father if paternity is established or against the applicant for services if the putative father is excluded as the biological father.

(B) Recovery by the office through all available processes shall be initiated, including income withholding, when appropriate.

(5) Any party who objects to the results of such paternity testing may request additional testing upon proper notice and advance payment for retesting, and the office shall assist the contestant in obtaining such additional testing as may be requested.

(6) If the results of paternity testing establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, the office may file a complaint for paternity and child support in the circuit court.

(c) Any paternity testing results obtained pursuant to an administrative order for paternity testing shall be admissible into evidence in any circuit court for the purpose of adjudicating paternity, as provided by § 9-10-108.

(d) If the results of paternity testing exclude an alleged parent from being the biological parent of the child, the office shall issue an administrative determination that declares that the excluded person is not a parent of the child.

(e) If the mother should die before the final order, the action may be revived in the name of the child, and the mother's testimony at the temporary hearing may be introduced in the final hearing.

(f) Upon motion by a party, the court shall issue a temporary child support order in accordance with this chapter, the guidelines for child support, and the family support chart, when paternity is disputed and a judicial or administrative determination of paternity is pending, if there is clear and convincing genetic evidence of paternity.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 4, p. 25; 1879, No. 72, § 2, p. 95; C. & M. Dig., § 775; Pope's Dig., § 931; Acts 1955, No. 374, § 1; A.S.A. 1947, § 34-704; Acts 1997, No. 1296, § 4; 2001, No. 1248, §§ 1-3; 2003, No. 1185, § 11.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and ef-

fective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

## CASE NOTES

**Applicability.**

This section applies to paternity tests ordered by the Office of Child Support Enforcement and not to tests ordered by the court; § 9-10-108 specifically deals with court-ordered paternity tests and, more importantly, while some language in this section incorporates the procedures of

§ 9-10-108, there is no language in § 9-10-108 incorporating the protections of this section. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

**Cited:** *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981).

### 9-10-104. Suit to determine paternity of child born outside of marriage.

Petitions for paternity establishment may be filed by:

- (1) A biological mother;
- (2) A putative father;
- (3) A person for whom paternity is not presumed or established by court order, including a parent or grandparent of a deceased putative father; or
- (4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

**History.** Acts 1981, No. 664, §§ 1, 2; A.S.A. 1947, §§ 34-716, 34-717; Acts 1989, No. 725, § 4; 1995, No. 1184, § 1; 2009, No. 1312, § 1.

**Amendments.** The 2009 amendment inserted "including a parent or grandparent of a deceased putative father" in (3).

## RESEARCH REFERENCES

**Ark. L. Notes.** Flaccus, A Grab Bag of Recent Arkansas Cases, 1999 Ark. L. Notes 25.

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

Fifteenth Annual Survey of Arkansas Law, 15 U. Ark. Little Rock L.J. 427.

**U. Ark. Little Rock L. Rev.** Annual

Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

Note: Family Law-Putative Fathers and the Presumption of Legitimacy-Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights of Putative Fathers in Arkansas, 25 U. Ark. Little Rock L. Rev. 369.

## CASE NOTES

## ANALYSIS

In General.  
Burden of Proof.  
Defenses.  
Presumptions.  
Procedure.  
Standing.

**In General.**

It is not against the public policy of this state to allow a third party to attempt to

illegitimize a child which was conceived, but not born during marriage. *Willmon v. Hunter*, 297 Ark. 358, 761 S.W.2d 924 (1988).

**Burden of Proof.**

In a paternity proceeding brought against a living putative father, even in the absence of blood testing, the mother's burden of proof is a mere preponderance of the evidence, as the proceeding is civil in nature. *Erwin L.D. v. Myla Jean L.*, 41



Ark. App. 16, 847 S.W.2d 45 (1993).

### Defenses.

A mother's agreement or assurances that she would not pursue a paternity action to request support cannot validly be interposed by a putative father as a defense. *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

Misrepresentation concerning the use of contraceptives is not a defense to paternity; to permit this defense would result in the denial of support to innocent children whom the law was designed to protect. *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

### Presumptions.

Neither Lord Mansfield's Rule, which provides that the declarations of a father or mother cannot be admitted to bastardize the issue born after marriage, nor the presumption of legitimacy of children born during the wedlock of two persons, apply where the child is born out of wedlock. *Dunn v. Davis*, 291 Ark. 492, 725 S.W.2d 853 (1987).

Presumption of legitimacy of a child conceived, but not born, during marriage, is rebuttable. *Willmon v. Hunter*, 297 Ark. 358, 761 S.W.2d 924 (1988).

Chancellor did not err in ordering a paternity test pursuant to this section, as public policy does not forbid the rebuttal of the presumption of legitimacy by paternity testing. *Golden v. Golden*, 57 Ark. App. 143, 942 S.W.2d 282 (1997).

### Procedure.

Trial court erred in dismissing a paternity complaint on the basis of collateral estoppel or *res judicata* when the alleged biological father of the child was not a party, and was not in privity to a party, in an earlier divorce decree proclaiming the mother's husband to be the father of the child, and the matter of paternity had not been fully or fairly litigated in the earlier divorce action. *State Office of Child Support Enforcement v. Willis*, 347 Ark. 6, 59 S.W.3d 438 (2001).

### Standing.

A child conceived and born of a marriage, and thus presumed to be the child of

the marital partners, has no standing to bring a paternity action. *Hall v. Freeman*, 327 Ark. 148, 936 S.W.2d 761 (1997).

The presumption of legitimacy of a child born during marriage is the presumption to which reference is made in subdivision (3) of this section; the General Assembly has seen fit to preserve it as a bar to an action by a child born during a marriage. *Hall v. Freeman*, 327 Ark. 148, 936 S.W.2d 761 (1997).

Because the legislature was presumed to have known of prior Supreme Court decisions when it amended this section, a putative father had standing to bring an action to determine the paternity of a child born to a woman married to another. *R.N. v. J.M.*, 347 Ark. 203, 61 S.W.3d 149 (2001).

Father who moved to annul a 1966 adoption, on grounds the father was fraudulently induced into believing the child was the father's biological child, was adjudicated to be the biological father in the adoption decree and did not fit within the statutorily-defined group of individuals upon whom standing was conferred to challenge paternity; thus, the trial court properly denied the father's request for paternity testing. *McAdams v. McAdams*, 353 Ark. 494, 109 S.W.3d 649 (2003).

Father's argument that custodian of the child did not have standing to bring a paternity action was irrelevant as the plaintiff listed in all the pleadings was the Office of Child Support Enforcement (OCSE), and the OCSE had the authority under this section to bring a paternity action. *Watt v. Office of Child Support Enforcement*, 364 Ark. 236, 217 S.W.3d 785 (2005).

**Cited:** *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Fuller v. Robinson*, 279 Ark. 252, 650 S.W.2d 585 (1983); *In re S.J.B.*, 294 Ark. 598, 745 S.W.2d 606 (1988); *Department of Human Servs. ex rel. Davis v. Seamster*, 36 Ark. App. 202, 820 S.W.2d 298 (1991); *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

**9-10-105. Trial by court.**

When the case is ready for trial, if the accused denies being the father of the child, the circuit court shall hear the evidence and decide the case.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., § 776; Pope's Dig., § 932; Acts 1955, No. 374, § 2; A.S.A. 1947, § 34-705; Acts 2003, No. 1185, § 12.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and ef-

fective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

**CASE NOTES****ANALYSIS**

Child Support.  
Jury Trial.

**Child Support.**

A putative father in a paternity case adjudged to pay less than the statutory minimum for the child's support was held not entitled to attack the validity of the paternity statute on the ground that it

does not provide for a jury to fix the amount paid. *Swaim v. State*, 184 Ark. 1107, 44 S.W.2d 1098 (1932).

**Jury Trial.**

Since a paternity proceeding was essentially an action at law for the recovery of money, the appellant was entitled to a jury trial on the issues of fact. *Waddell v. State*, 235 Ark. 293, 357 S.W.2d 651 (1962).

**9-10-106. [Repealed.]**

**Publisher's Notes.** This section, concerning paternity referees, was repealed by Acts 1993, No. 1242, § 2. The section

was derived from Acts 1997, No. 363, § 1; 1983, No. 559, § 1; A.S.A. 1947, § 34-701.1.

**9-10-107. [Repealed.]**

**Publisher's Notes.** This section, concerning hearings for enforcement of support orders, was repealed by Acts 1995, No. 1064, § 2. The section was derived from Acts 1985, No. 988, § 4; 1986 (2nd

Ex. Sess.), No. 14, § 1; A.S.A. 1947, § 34-701.2; Acts 1993, No. 1242, § 3; 1995, No. 1184, §§ 1, 3. For present law, see § 9-14-204.

**9-10-108. Paternity test.**

(a)(1) Upon motion of either party in a paternity action, the trial court shall order that the putative father, mother, and child submit to scientific testing for paternity, which may include deoxyribonucleic acid testing, to determine whether or not the putative father can be excluded

as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

(2)(A) Upon motion of either party in a paternity action when the mother is deceased or unavailable, the trial court shall order that the putative father and child submit to scientific testing for paternity, which may include deoxyribonucleic acid typing, to determine whether or not the putative father can be excluded as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

(B) If a maternal relative is available and willing to participate in paternity testing, the trial court shall include the maternal relative within its order for paternity testing.

(3)(A) Upon motion of either party in a paternity action when the father is deceased or unavailable, the trial court shall order that the mother and child submit to scientific testing for paternity, which may include deoxyribonucleic acid typing, to determine whether or not the putative father can be excluded as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

(B) If a paternal relative is available and willing to participate in paternity testing, the trial court shall include the paternal relative within its order for paternity testing.

(4) The tests shall be made by a duly qualified expert or experts to be appointed by the court.

(5)(A) A written report of the test results prepared by the duly qualified expert conducting the test or by a duly qualified expert under whose supervision or direction the test and analysis have been performed certified by an affidavit duly subscribed and sworn to by him or her before a notary public may be introduced in evidence in paternity actions without calling the expert as a witness unless a motion challenging the test procedures or results has been filed within thirty (30) days of the trial on the complaint and bond is posted in an amount sufficient to cover the costs of the duly qualified expert to appear and testify.

(B)(i) If contested, documentation of the chain of custody of samples taken from test subjects in paternity testing shall be verified by affidavit of one (1) person witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of these specimens.

(6)(A) If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child after corroborating testimony of the mother in regard to access during the probable period of conception, it shall constitute a prima facie case of establishment of



paternity, and the burden of proof shall shift to the putative father to rebut that proof.

(B) If the results of the paternity tests conducted pursuant to subdivision (a)(2) of this section establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, after corroborating testimony concerning the conception, birth, and history of the child, this shall constitute a prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut that proof.

(7) Whenever the court orders scientific testing for paternity and one (1) of the parties refuses to submit to the testing, that fact shall be disclosed upon the trial and may be considered civil contempt of court.

(8) The costs of the scientific testing for paternity and witness fees shall be taxed by the court as other costs in the case.

(9) Whenever it shall be relevant to the prosecution or the defense in a paternity action, scientific testing for paternity that excludes third parties as the biological father of the child may be introduced under the same requirements as set out in this section.

(b) The appearance of the name of the father with his consent on the certificate of birth, the social security account number of the alleged father filed with his consent with the Division of Vital Records of the Department of Health pursuant to § 20-18-407, a certified copy of the certificate or records on which the name of the alleged father was entered with his consent from the vital records department of another state, or the registration of the father with his consent in the Putative Father Registry pursuant to § 20-18-702 shall constitute a prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut such in a proceeding for paternity establishment.

**History.** Acts 1955, No. 127, §§ 1-3; 705.1 — 34-705.3; Acts 1989, No. 725, § 2; 1981, No. 473, § 1; 1983, No. 437, § 1; 1991, No. 474, § 2; 1991, No. 986, § 1; 1985, No. 988, § 1; A.S.A. 1947, §§ 34- 1995, No. 1178, § 1.

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## CASE NOTES

## ANALYSIS

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**Constitutionality.**

Trial court ruling that utilizing this section to allow blood tests in evidence only to exclude paternity was not a denial of equal protection and that blood tests would not be admitted to establish paternity was evidentiary and thus not an appealable order. *Story v. Hodges*, 272 Ark. 365, 614 S.W.2d 506 (1981).

**In General.**

The claim of child support enforcement against putative father was an original action to establish paternity, as opposed to an action to modify a paternity order under § 9-10-115, and the judge correctly found paternity pursuant to subdivision (a)(6)(B) of this section. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Statute granting trial courts authority to order a paternity test made an express distinction between the type of testimony required when the mother was alive and when the mother was deceased; subdivision (a)(2)(A) of this section instructs that, upon motion of either party in a paternity action when the mother was deceased or unavailable, the trial court could order the putative father and child to submit to scientific testing for paternity. *Watt v. Office of Child Support Enforcement*, 364 Ark. 236, 217 S.W.3d 785 (2005).

Where the putative father and the child's mother had a brief romantic rela-

tionship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

**Additional Tests.**

Though subdivision (a)(5) of this section does not explicitly provide procedures for requesting additional court-ordered tests, the statute also does not exclude such a possibility; in light of the legislative intent that paternity of the children be established in the most expedient manner for all children of Arkansas, the circuit courts have wide discretion to take actions to resolve the question of paternity and may require a party requesting an additional paternity test to prove that the first test was defective before the court can compel a second paternity test. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

Section 9-10-103 applies to paternity tests ordered by the Office of Child Support Enforcement and not to tests ordered by the court; this section specifically deals with court-ordered paternity tests and, more importantly, while some language in § 9-10-103 incorporates the procedures of this section, there is no language in this section incorporating the protections of § 9-10-103. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

**Admissibility.**

The trial court erred in allowing into evidence two blood tests which did not exclude defendant as being the father, for the purpose of showing that he was the father. *Winston v. Robinson*, 270 Ark. 996, 606 S.W.2d 757 (1980).

Fact of refusal to take blood test is admissible. *Cox v. Farrell*, 292 Ark. 177, 728 S.W.2d 954 (1987).

Blood tests inadmissible where person who verified test results did not perform them. This section requires that person performing blood test make verification thereon. *Tolhurst v. Reynolds*, 21 Ark. App. 94, 729 S.W.2d 25 (1987).

Where a paternity test was required to be notarized under subdivision (a)(5)(A) of this section, it was a self-authenticating document under Evid. Rule 902(8) and plaintiff was not required to produce any extrinsic evidence of authenticity as a condition precedent to admissibility. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

### **Appeals.**

In a suit alleging paternity, an order for the defendant to report for paternity blood testing under this section is not final, and therefore not appealable under ARAP(a)(2). *Helton v. Arkansas Dep't of Human Servs.*, 309 Ark. 268, 828 S.W.2d 842 (1992).

### **Burden of Proof.**

In a paternity proceeding brought against a living putative father, the mother's burden of proof is a mere preponderance of the evidence, as the proceeding is civil in nature. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992); *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992); *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

A Roche blood-test report finding a 99.98% probability that defendant was the father of plaintiff's child, along with the corroborating testimony of plaintiff, constituted a prima facie case of establishment of paternity; defendant had the burden of rebutting this proof. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

If the results of the paternity tests conducted pursuant to subdivision (a)(2) of this section establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, and there is corroborating testimony concerning the conception, birth, and history of the child, a prima facie case of establishment of paternity is created, and the burden of proof shall shift to the putative father to rebut such proof. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

### **Certification.**

Although subsection (a) of this section was amended to allow for certification by an expert under whose supervision or direction the test has been performed, the statements by the signatory of the report, that she was a director of the laboratory and that she had read the report, also fell

short of meeting the foundational prerequisites for admission under the amended version. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

### **Chain of Custody.**

Like a challenge of the test procedures or results pursuant to subdivision (a)(5)(A) of this section, subdivision (a)(5)(B)(i) of this section requires a contest on chain-of-custody grounds within 30 days of trial. *Parks v. Ewans*, 316 Ark. 91, 871 S.W.2d 343 (1994).

### **Corroboration.**

Since subdivision (a)(6)(A) of this section requires corroborating testimony of access from the mother, where mother's affidavit providing corroboration was not proffered, the statutory presumption never arose. *State v. Rogers*, 50 Ark. App. 108, 902 S.W.2d 243 (1995).

### **Cross-Examination.**

The trial court was correct in ruling that laboratory report was not admissible, since the persons who performed the blood tests at the laboratory were not available for cross-examination. *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985).

### **Evidence.**

Although putative father attempted to rebut the evidence of paternity by offering the Affidavit of Birth Out of Wedlock and birth certificate as evidence that someone else was the father, his rebuttal failed, because under the law applicable when those documents were executed, they constituted presumptive evidence of paternity only, not conclusive evidence. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

### **Expert Witnesses.**

In a paternity action, no prejudicial error found in plaintiff's examination of expert witness who administered blood test. *Bradley v. Houston*, 12 Ark. App. 351, 676 S.W.2d 746 (1984).

A.R.C.P. Rule 26(e), regarding supplementation of responses concerning expert witness, did not apply where court had ordered defendant and child to undergo blood tests. *Bradley v. Houston*, 12 Ark. App. 351, 676 S.W.2d 746 (1984).

Defendant failed to request expert witness's appearance within a reasonable time prior to trial where defendant made the request to cross-examine the expert



who lived out-of-state only six business days before trial. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

### **Foreign Judgment.**

As the North Carolina courts would give res judicata effect to its finding of paternity in a divorce judgment in its courts, the Arkansas court was required to do likewise under the constitutional command of full faith and credit in denying the defendant's motion for blood testing. *Benac v. State*, 34 Ark. App. 238, 808 S.W.2d 797 (1991).

Defendant failed to request expert witness's appearance within a reasonable time prior to trial where defendant made the request to cross-examine the expert who lived out-of-state only six business days before trial. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

### **Genetic Testing.**

In light of the fact that recently developed genetic testing can, with a high degree of certainty, identify the father of a child, and be viewed as conclusive by the fact-finder in paternity suits, strict adherence to the statutory foundational prerequisites is not unreasonable. *Ross v. Moore*, 30 Ark. App. 207, 785 S.W.2d 243 (1990).

Circuit court did not err in denying the request for an additional paternity test because the Office of Child Support Enforcement presented no evidence that the first paternity test was untrustworthy or defective; however, the circuit court did not expressly determine that a dismissal with prejudice was in the best interests of the child as, at the time of the trial, paternity had not been established for the child and the only effect of a dismissal with prejudice was to permanently exclude appellee from further paternity testing. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

### **Identity of Test-Giver.**

Although the chancery court has broad discretion in determining whether blood test reports should be admitted into evidence, chancellor abused his discretion by admitting report that contained nothing to indicate the identity of the person who performed the test or whether the person who performed the test was a duly qualified expert, and was signed by the laboratory director and scientific director respec-

tively, but did not indicate that these two men performed the test or that they were qualified experts. *Boyles v. Clements*, 302 Ark. 575, 792 S.W.2d 311 (1990).

Blood test inadmissible where there was nothing in the report to indicate the identity of the person who performed the test or whether the person who performed the test was a duly qualified expert. *Ross v. Moore*, 30 Ark. App. 207, 785 S.W.2d 243 (1990).

### **Notice of Objection.**

Putative father was not required to give 30 days' notice in order to object to admission of a blood test report; such notice is required only where the chain of custody, test procedures, or results are contested. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

### **Right to Counsel.**

Putative father's physical liberty was not in jeopardy at the initial hearing when he was ordered to submit to a paternity test; thus, he was not guaranteed the right to counsel in the paternity proceeding. *Burrell v. Arkansas Dep't of Human Servs.*, 41 Ark. App. 140, 850 S.W.2d 8 (1993).

### **Sufficiency.**

Evidence of blood tests was sufficient to establish that husband was not father of wife's child. *Richardson v. Richardson*, 252 Ark. 244, 478 S.W.2d 423 (1972).

Where the blood tests showed a 99.27% probability that the putative father was the father, he was living with the mother during the probable period of conception, and the mother stated she was not involved with anyone else at that time, this evidence gave her a statutory presumption of paternity. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

Blood test showing a 99.59% probability that defendant was the natural father, coupled with the mother's testimony regarding access during the probable period of conception, gave rise to a statutory presumption of paternity which was not rebutted by the father. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Where written blood test report did not comply with the foundational prerequisites set forth in subdivision (a)(5)(A), it could not be admitted into evidence. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

**Cited:** *George v. George*, 247 Ark. 17, 444 S.W.2d 62 (1969); *Dunn v. Davis*, 291 Ark. 492, 725 S.W.2d 853 (1987); *Laden v. Morgan*, 303 Ark. 585, 798 S.W.2d 678 (1990); *Roe v. State*, 304 Ark. 673, 804 S.W.2d 708 (1991); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Davis v. Child*

*Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996); *Blankenship v. Office of Child Support Enforcement*, 58 Ark. App. 260, 952 S.W.2d 173 (1997); *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004).

### **9-10-109. Child support following finding of paternity.**

(a)(1)(A) Subsequent to the execution of an acknowledgment of paternity by the father and mother of a child pursuant to § 20-18-408 or § 20-18-409, or a similar acknowledgment executed during the child's minority, or subsequent to a finding by the court that the putative father in a paternity action is the father of the child, the court shall follow the same guidelines, procedures, and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit court as if it were a case involving a child born of a marriage in awarding custody, visitation, setting amounts of support, costs, and attorney's fees, and directing payments through the clerk of the court, or through the Arkansas child support clearinghouse if the case was brought pursuant to Title IV-D of the Social Security Act.

(B) All child support payments paid by income withholding shall be subject to the provisions set forth in § 9-14-801 et seq.

(2) The court may provide for the payment of support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls prior to graduation from high school so long as such support is conditional on the child's remaining in school.

(3) The court may also provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent.

(b)(1)(A) All orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year.

(B) The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely satisfied.

(2) The clerk upon direction from the court and as an alternative to collecting the annual fee during the anniversary month each year after entry of the order may prorate the first fee collected at the time of the first payment of support under the order to the number of months remaining in the calendar year and thereafter collect all fees as provided in this subsection during the month of January of each year.



(3)(A) Payments made for this fee shall be made on an annual basis in the form of a check or money order payable to the clerk of the court or other such legal tender that the clerk may accept.

(B) This fee payment shall be separate and apart from the support payment, and under no circumstances shall the support payment be reduced to fulfill the payment of this fee.

(4) Upon the nonpayment of the annual fee by the noncustodial parent within ninety (90) days, the clerk may notify the payor under the order of income withholding for child support who shall withhold the fee in addition to any support and remit it to the clerk.

(5)(A) All moneys collected by the clerk as a fee as provided in this subsection shall be used by the clerk's office to offset administrative costs as a result of this subchapter.

(B)(i) Until all necessary data processing equipment has been acquired, at least twenty percent (20%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated data system for use in administering the requirements of this subchapter.

(ii) The acquisition and update of software for the automated data system shall be a permitted use of these funds.

(C)(i) All fees collected under this subsection shall be paid into the county treasury to the credit of the fund to be known as the "support collection costs fund".

(ii) Moneys deposited into this fund shall be appropriated and expended for the uses designated in this subdivision (b)(5) by the quorum court at the direction of the clerk of the court.

(c) The clerk of the court shall maintain accurate records of all support orders and payments under this section.

(d) The clerk may accept the support payment in any form of cash or commercial paper, including personal checks, and may require that the custodial parent or nonobligated spouse be named as payee thereon.

**History.** Acts 1979, No. 71, § 1; 1985, No. 988, § 2; A.S.A. 1947, § 34-706.1; Acts 1987, No. 599, § 2; 1989 (3rd Ex. Sess.), No. 54, § 2; 1991, No. 1008, § 1; 1991, No. 1098, § 1; 1991, No. 1102, § 1; 1995, No. 1091, § 2; 1997, No. 208, § 6; 1997, No. 1296, §§ 5, 6; 1999, No. 1514, § 1.

**A.C.R.C. Notes.** Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14,

16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

As amended by Acts 1999, No. 1514, subdivision (b)(1)(A) began: "Beginning January 1, 1998, and continuing thereafter." Subdivision (b)(1)(B) ended: "Until January 1, 1998, all orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of twenty-four dollars (\$24.00) per year."

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit,



Chancery, Probate and Juvenile Court...."  
**Publisher's Notes.** Acts 1989 (3rd Ex. Sess.), No. 54, § 2, is also codified as § 9-12-312.

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Seventeenth Annual Survey of Arkansas Law — Family Law, 17 U. Ark. Little Rock L.J. 451.

## CASE NOTES

### ANALYSIS

Construction.  
 Attorney Fees.  
 Burden of Proof.  
 Custody.  
 Jurisdiction.  
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 Public Policy.

### Construction.

Subdivision (a)(1) of this section and § 9-10-113(a) are congruous; the finding of paternity and the establishment of visitation therein is a final determination from which to use the same standards as other custody situations. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

### Attorney Fees.

Both subsection (a) of this section and § 9-27-342(d) provide a statutory basis for awarding attorney's fees in paternity actions. *Beavers v. Vaughn*, 41 Ark. App. 96, 849 S.W.2d 6 (1993).

The plain language of subdivision (a)(1) of this section limits an award of attorney's fees to proceedings in which the court finds the putative father to be the father of the child. *Child Support Enforcement Unit v. Haller*, 50 Ark. App. 10, 899 S.W.2d 485 (1995).

Where there was no finding that party was the father of the child, subdivision (a)(1) of this section does not provide a statutory basis to award attorney's fees. *Child Support Enforcement Unit v. Haller*, 50 Ark. App. 10, 899 S.W.2d 485 (1995).

Trial court did not abuse its discretion in denying mother's motion for attorney's fees in a paternity action; the trial court considered the proper factors in deciding the mother's attorney's fee motion and she failed to show an abuse of discretion by

the trial court. *Davis v. Williamson*, 359 Ark. 33, 194 S.W.3d 197 (2004).

### Burden of Proof.

Fathers of illegitimate children should certainly bear the same burden as fathers of legitimate children born of marriage. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

### Custody.

Each parent has the right to request a change in custody; it is then that party's burden to show that there has been a change in circumstances since the original order establishing custody or that there were facts not presented at the initial hearing that would bear on the best interests of the child. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

It is not an unfair burden to require the biological father to prove a change of circumstances when the law presumes the child shall be in the custody of the mother and the paternity order establishes visitation. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

### Jurisdiction.

Where defendant was found to be father of child in paternity case and ordered to pay support and mother subsequently filed a petition under the Revised Uniform Enforcement of Support Act seeking modification of support order, petition was to be treated just as though it were a child support proceeding subsequent to a divorce, and in such a case, the chancery court that granted the divorce is the court that has continuing jurisdiction to modify the original allowance of child support. *White v. Winston*, 302 Ark. 345, 789 S.W.2d 459 (1990).

### Modifications.

This section authorizes modifications from time to time in the continuing order

of support but it does not authorize a modification of a finding of paternity. *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982).

#### **Public Policy.**

Insofar as the agreement represented an attempt to permanently deprive the child of support, it was void as against

public policy. *Paul M. v. Teresa M.*, 36 Ark. App. 116, 818 S.W.2d 594 (1991).

**Cited:** *Roe v. State*, 304 Ark. 673, 804 S.W.2d 708 (1991); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Rudolph v. Floyd*, 309 Ark. 514, 832 S.W.2d 219 (1992); *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

### **9-10-110. Judgment for lying-in expenses — Commitment on failure to pay.**

(a) If it is found by the court that the accused is the father of the child, the court shall render judgment against him for the lying-in expenses in favor of the mother, person, or agency incurring the lying-in expenses, if claimed.

(b) If the lying-in expenses are not paid upon the rendition of the judgment, together with all costs that may be adjudged against him in the case, then the court shall have the power to commit the accused person to jail until the lying-in expenses are paid, with all costs.

(c)(1) Bills and invoices for pregnancy and childbirth expenses and paternity testing are admissible as evidence in the circuit court or juvenile division of circuit court without third-party foundation testimony if such bills or invoices are regular on their face.

(2) Such bills or invoices shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., § 777; Acts 1927, No. 111, § 1; Pope's Dig., § 933; Acts 1955, No. 236, § 1; 1979, No. 718, § 1; 1983, No. 177, § 1; A.S.A. 1947, § 34-706; Acts 1997, No. 1296, § 7.

**A.C.R.C. Notes.** Ark. Const., Amend.

80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

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### **CASE NOTES**

#### **ANALYSIS**

Constitutionality.

Purpose.

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Determination of Liability.

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Proof.

#### **Constitutionality.**

This section does not discriminate on the basis of sex and does not violate the equal protection clause. *Eaves v. Dover*,

291 Ark. 545, 726 S.W.2d 276 (1987).

#### **Purpose.**

The major purpose of Arkansas' filiation laws is to provide a process by which the putative father can be identified so that he may assume his equitable share of the responsibility to his child. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

#### **Counsel.**

While the statutes provide that the prosecuting attorney shall conduct the suit on behalf of the state on all appeals to the circuit court in cases of paternity, this does not mean that the mother of the child cannot have an attorney to represent her nor does it mean that the suit must be dismissed if the prosecuting attorney does not appear in the case. *Epperson v. Sharp*, 222 Ark. 456, 261 S.W.2d 267 (1953).

#### **Determination of Liability.**

Father has no vested right to have his liability determined by law as it existed when the child was born; this is not an *ex post facto* law. *State ex rel. Woolems v. Davis*, 178 Ark. 692, 11 S.W.2d 479 (1928).

#### **Discretion of Court.**

The trial court has discretion in assessing the amount of any awards made under this section. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

The court, in awarding lying-in expenses or attorney's fees under this section, may exercise its discretion in determining the amount that father should bear, and in doing so, it may even consider the mother's financial means when making an award. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

#### **Proof.**

A judgment awarding lying-in expenses and maintenance of the child would not be reversed because there was no proof as to the amount of the expenses. *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910).

Trial court did not err in denying some of the expenses included in mother's claim for lying-in expenses as this section includes expenses directly connected to the birth of a healthy infant and does not normally include items such as maternity clothes, lost wages, or counseling that are for the benefit of the mother; further, this section allows expenses to be paid to the person incurring the expense and the trial court would have considered a claim for medical expenses paid by the prospective adoptive parents, however, the mother failed to provide proof that she incurred the medical expenses allegedly paid by the adoptive parents. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court did not err in disallowing counseling expenses where nothing in the record indicated that the counseling was for her baby. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court did not err in disallowing expenses for maternity clothes since no Arkansas cases considered maternity clothes as lying-in expenses. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court did not err in disallowing medical expenses that had been paid by prospective adoptive parents where the mother failed to adequately prove that she had incurred the expenses allegedly paid. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court properly disallowed two medical bills for which a Medicaid claim was pending where the mother failed to show that the expenses had either been paid or incurred. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

**Cited:** *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982); *Davis v. Child Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996).

### **9-10-111. Judgment for child support — Bond.**

(a) If it is found by the circuit court that the accused is the father of the child and, if claimed by the mother, the circuit court or circuit judge shall give judgment for a monthly sum of not less than ten dollars (\$10.00) per month for every month from the birth of the child until the child attains eighteen (18) years of age.



(b)(1) The court shall further order that the father enter into bond to the State of Arkansas in the penal sum of five hundred dollars (\$500), with good and sufficient security.

(2) The bond shall be void if the person or his executors or administrators indemnify each county in this state from all costs and expenses for the maintenance or otherwise of the child while under eighteen (18) years of age and for the payment of the monthly payments that may be adjudged as provided in subsection (a) of this section.

(3) Bonds shall be approved by the circuit judge and an entry made on the record of the conditions and the securities thereon.

(c) If the person refuses or neglects to enter into bond with security as provided in this section, the circuit judge shall commit him to the jail of the county, there to remain until he complies with the order or until he is otherwise discharged according to law.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., §§ 777, 778; Acts 1927, No. 111, § 1; Pope's Dig., §§ 933, 934; Acts 1955, No. 236, § 1; 1979, No. 718, § 1; 1983, No. 177, § 1; A.S.A. 1947, §§ 34-706, 34-707.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and ef-

fective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

## CASE NOTES

### ANALYSIS

Counsel.

Determination of Liability.

Modification.

Noncompliance.

Police Power.

### Counsel.

While the statutes provide that the prosecuting attorney shall conduct the suit on behalf of the state on all appeals to the circuit court in cases of paternity, this does not mean that the mother of the child cannot have an attorney to represent her nor does it mean that the suit must be dismissed if the prosecuting attorney does not appear in the case. *Epperson v. Sharp*, 222 Ark. 456, 261 S.W.2d 267 (1953).

### Determination of Liability.

Father has no vested right to have his liability determined by law as it existed when the child was born; this is not an ex post facto law. *State ex rel. Woolems v. Davis*, 178 Ark. 692, 11 S.W.2d 479 (1928).

The trial court was not limited to amounts actually expended for past support. *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992).

### Modification.

A general reservation of jurisdiction, in the absence of fraud or another ground listed under ARCP 60(c), will permit modification of a decree after 90 days only with respect to issues that were before the court in the original action. *Beavers v. Vaughn*, 41 Ark. App. 96, 849 S.W.2d 6 (1993).

**Noncompliance.**

Commitment of the putative father of an illegitimate child to jail indefinitely for failure to pay sums to the prosecuting witness and to furnish bond was held erroneous where the evidence disclosed that it was impossible for him to comply with the order of the county court. *Hemby v. State*, 188 Ark. 586, 67 S.W.2d 182 (1934).

*Land v. State*, 84 Ark. 199, 105 S.W. 90 (1907).

**Cited:** *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982); *Watt v. Office of Child Support Enforcement*, 364 Ark. 236, 217 S.W.3d 785 (2005).

**Police Power.**

Imprisonment under this statute is an exercise of police powers and not for debt.

**9-10-112. Income withholding — Delinquent noncustodial parent.**

(a)(1) Except as provided in subsection (b) of this section, all persons under court order on August 1, 1985, to pay support who become delinquent thereunder in an amount equal to the total court-ordered support payable for thirty (30) days shall be subject to income withholding.

(2)(A) In all orders that provide for the payment of money for the support of any child, the circuit court shall include a provision directing a payor to deduct from money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to meet the periodic child support payments imposed by the court, plus an additional amount of not less than twenty percent (20%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order.

(B) The use of income withholding does not constitute an election of remedies and does not preclude the use of other enforcement remedies.

(b)(1) Beginning October 1, 1989, in all cases brought pursuant to Title IV-D, the support orders issued or modified shall include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. Otherwise, it shall become effective under subsection (a) of this section following the procedure set forth in subsection (c) of this section, or as provided in subsection (d) of this section.

(2) Beginning January 1, 1994, all support orders issued or modified shall include a provision for immediate implementation of income withholding absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement.

(3) In all non-Title IV-D cases brought prior to January 1, 1994, the support order may include a provision for immediate implementation of income withholding, absent a finding of good cause not to require

immediate withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. The judge of each division shall determine if all support orders shall be subject to the provisions of this section and shall enter a standing order setting forth the treatment of non-Title IV-D cases in that division prior to January 1, 1994.

(c) In activating an order of income withholding that did not become effective immediately, the court shall follow the same procedures and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit court.

(d) In cases brought pursuant to Title IV-D with support orders effective prior to October 1, 1989, income withholding may take effect immediately in any child support case at the request or upon the consent of the noncustodial parent.

**History.** Acts 1983, No. 592, § 1; 1985, No. 988, § 3; A.S.A. 1947, § 34-706.2; Acts 1989, No. 948, § 1; 1991, No. 1095, § 1; 1993, No. 396, § 3; 2003, No. 1020, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**U.S. Code.** Title IV-D, referred to in this section, refers to Title IV-D of the Social Security Act, which is codified at 42 U.S.C. § 651 et seq.

**Cross References.** Jurisdiction of circuit courts, Ark. Const., Amend. 80, §§ 6, 19.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

## CASE NOTES

**Cited:** Cochran v. Cochran, 309 Ark. 604, 832 S.W.2d 252 (1992); Arkansas Dep't of Human Servs. v. Hardy, 316 Ark. 119, 871 S.W.2d 352 (1994).

### 9-10-113. Custody of child born outside of marriage.

(a) When a child is born to an unmarried woman, legal custody of that child shall be in the woman giving birth to the child until the child reaches eighteen (18) years of age unless a court of competent jurisdiction enters an order placing the child in the custody of another party.

(b) A biological father, provided he has established paternity in a court of competent jurisdiction, may petition the circuit court in the county where the child resides for custody of the child.

(c) The court may award custody to the biological father upon a showing that:

(1) He is a fit parent to raise the child;

(2) He has assumed his responsibilities toward the child by providing care, supervision, protection, and financial support for the child; and



(3) It is in the best interest of the child to award custody to the biological father.

(d) When in the best interest of a child, visitation shall be awarded in a way that assures the frequent and continuing contact of the child with the mother and the biological father.

**History.** Acts 1981, No. 665, § 1; A.S.A. 1947, § 34-718; Acts 1987, No. 488, § 1; 1987, No. 667, § 1; 2003, No. 1185, § 13; 2007, No. 654, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

**Publisher's Notes.** Acts 1981, No. 665, § 2, stated the General Assembly's find-

ing and determination that, prior to June 17, 1981, parents of illegitimate children were not being accorded equal protection of the law and that the United States Supreme Court had determined that both parents of an illegitimate child have a right to establish a parental and custodial relationship with the child.

**Amendments.** The 2007 amendment substituted "child born outside of marriage" for "illegitimate child" in the section heading; and added (d).

**Cross References.** Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

Arkansas Law Survey, Price, Civil Procedure, 9 U. Ark. Little Rock L.J. 91.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

Seventeenth Annual Survey of Arkansas Law — Family Law, 17 U. Ark. Little Rock L.J. 451.

## CASE NOTES

### ANALYSIS

In General.  
Construction.  
Burden of Proof.  
Change in Circumstances.  
Custody to Third Party.  
Parental Fitness.  
Presumption of Custody.  
Venue.

### In General.

Under this section, a biological father may petition for custody, provided that he has established paternity. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

### Construction.

Section 9-10-109(a)(1) and subsection (a) of this section are congruous; the finding of paternity and the establishment of visitation therein is a final determination from which to use the same standards as other custody situations. *Norwood v. Rob-*

*inson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

### Burden of Proof.

Each parent has the right to request a change in custody; it is then that party's burden to show that there has been a change in circumstances since the original order establishing custody or that there were facts not presented at the initial hearing that would bear on the best interests of the child. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Fathers of illegitimate children should certainly bear the same burden as fathers of legitimate children born of marriage. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

### Change in Circumstances.

It is not an unfair burden to require the biological father to prove a change of circumstances when the law presumes the child shall be in the custody of the mother and the paternity order establishes visita-

tion. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

The chancellor did not err by charging father with showing a change of circumstances since the last custody order, which the chancellor deemed the initial determination of paternity, and adding this to the three requirements listed in subsection (c) of this section, since a "material change of circumstances" is required in other change of custody cases. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Where a child was born outside of marriage and the father petitioned for a change of custody so that he could gain custody, although the appellate court had doubts about the father's alleged drug use, the circuit court, after weighing the evidence, properly decided that evidence existed to support a finding of changed circumstances, and determined that awarding custody of the child to the father was in the child's best interests. *Cranston v. Carroll*, 97 Ark. App. 23, 242 S.W.3d 643 (2006).

Order awarding custody of an illegitimate child to the child's father was upheld where the trial court did not err in not requiring the father to prove a material change of circumstances prior to the entry of the custody order; although an original visitation order did not set a future date for a custody hearing, the order was temporary in nature because it did not resolve the issue of custody. *Harmon v. Wells*, 98 Ark. App. 355, 255 S.W.3d 501 (2007).

### **Custody to Third Party.**

An award of custody of a child to the child's grandmother, with liberal visitation to the father was appropriate, where (1) the biological mother surrendered custody to the grandmother, (2) the father never voluntarily established his paternity and failed to assume his responsibilities toward the child for over 3 years, (3) the father recognized the difficulties he and his wife would face if there was an immediate removal of the child from the only home she had known, and (4) the grandmother also had custody of a half-sister of the child. *Freshour v. West*, 334 Ark. 100, 971 S.W.2d 263 (1998).

### **Parental Fitness.**

The chancellor was clearly justified in denying father's motion to change custody

where the clear evidence established that he had not assumed the responsibilities specified in subdivision (c)(2) of this section, even if he was deemed a fit parent in other respects. *State Office of Child Support Enforcement v. Mitchell*, 61 Ark. App. 54, 964 S.W.2d 218 (1998).

Court properly awarded custody of child to the father where paternity was established, the father paid child support and was a fit parent, the mother was unemployed, and she failed to aid the facilitation of a relationship between the father and the child. *Sheppard v. Speir*, 85 Ark. App. 481, 157 S.W.3d 583 (2004).

Court erred by awarding child custody to a father because the mother lived within her means, was receiving child support, was receiving legitimate governmental aid, and managed to run an independent household where she could be a full-time parent. Although the father had held down a full-time job for several years, had his family to support his parenting, and had taken responsibility for the child, he lived with his parents, he had a sister who could not be left alone with the child due to drug-abuse concerns, and he had no experience in raising a child. *Sykes v. Warren*, 99 Ark. App. 210, 258 S.W.3d 788 (2007).

Trial court properly awarded custody of a child to his biological father, pursuant to subsection (a) of this section, where the father had a clean, stable, loving environment for the child; the child suffered from a dog bite wound and had dirty hygiene while in the care of his mother, whose religious beliefs and mental health were factors in the trial court's assessment of the child's best interests. *Hicks v. Cook*, 103 Ark. App. 207, 288 S.W.3d 244 (2008).

### **Presumption of Custody.**

Before 1987, no provisions for presumption of custody were in this section, and either parent of an illegitimate child could petition for custody under the same three criteria; however, in 1987, the legislature changed this section by adding a presumption of custody in the mother and leaving the father with the right to seek custody after establishing paternity. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

The order establishing paternity gave the statutory presumption the effect of judicial determination. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Implicit in an order of paternity establishing visitation is a determination that custody should continue to rest in the mother. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

#### **Venue.**

The fact that the legislature provided for venue in two counties in § 9-10-104 (rewritten by 1989 amendment), which governs suits brought by a father to determine paternity, but only one county in this section, demonstrates that this section was intended to limit venue in custody actions to the county wherein the child resides. *Fuller v. Robinson*, 279 Ark. 252, 650 S.W.2d 585 (1983).

Mother properly raised a venue argument in her first responsive pleading; however, the issue was without merit because the provisions of this section were inapplicable in a case where a minor child no longer resided in Arkansas. *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007).

**Cited:** *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Jarmon v. Brown*, 286 Ark. 455, 692 S.W.2d 618 (1985); *Hooks v. Pratte*, 53 Ark. App. 161, 920 S.W.2d 24 (1996); *Leach v. Leach*, 57 Ark. App. 155, 942 S.W.2d 286 (1997); *Gilbert v. Moore*, 364 Ark. 127, 216 S.W.3d 583 (2005).

### **9-10-114. Visitation rights of father.**

When any circuit court in this state determines the paternity of a child and orders the father to make periodic payments for support of the child, the court may also grant reasonable visitation rights to the father and may issue such orders as may be necessary to enforce the visitation rights.

**History.** Acts 1979, No. 621, § 1; A.S.A. 1947, § 34-715.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court...."

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

### **CASE NOTES**

#### **Contempt Power.**

A chancery court has the power to use its contempt power to enforce its order awarding visitation to a stepparent in the context of a divorce decree. *Young v.*

*Smith*, 331 Ark. 525, 964 S.W.2d 784 (1998).

**Cited:** *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981).

### **9-10-115. Modification of orders or judgments.**

(a) The circuit court may at any time enlarge, diminish, or vacate any order or judgment in the proceedings under this section except in regard to the issue of paternity as justice may require and on such notice to the defendant as the court may prescribe.

(b) The court shall not set aside, alter, or modify any final decree, order, or judgment of paternity in which paternity blood testing, genetic



testing, or other scientific evidence was used to determine the adjudicated father as the biological father.

(c) Any signatory to a voluntary acknowledgment of paternity may rescind the acknowledgment by completing a form provided for that purpose and filing the form with the Division of Vital Records of the Department of Health:

(1) Prior to the date that an administrative or judicial proceeding, including a proceeding to establish a support order, is held relating to the child and the person executing the voluntary acknowledgment of paternity is a party; or

(2) Within sixty (60) days of executing the voluntary acknowledgment of paternity, whichever date occurs first.

(d)(1) Beyond the sixty-day period or other limitation set forth in subsection (c) of this section, a person may challenge a paternity establishment pursuant to a voluntary acknowledgment of paternity or an order based on an acknowledgment of paternity only upon an allegation of fraud, duress, or material mistake of fact.

(2) The burden of proof shall be upon the person challenging the establishment of paternity.

(e)(1)(A) When any man has been adjudicated to be the father of a child or is deemed to be the father of a child pursuant to an acknowledgment of paternity without the benefit of scientific testing for paternity and as a result was ordered to pay child support, he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support upon the filing of a motion challenging the adjudication or acknowledgment of paternity in a court of competent jurisdiction.

(B) If an acknowledgment of paternity was the basis for the order of support, the motion must comply with the requirements of subsection (d) of this section.

(2) The duty to pay child support and other legal obligations shall not be suspended while the motion is pending except for good cause shown, which shall be recited in the court's order.

(f)(1) If the test administered under subdivision (e)(1)(A) of this section excludes the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity as the biological father of the child and the court so finds, the court shall:

(A) Set aside the previous finding or establishment of paternity;

(B) Find that there is no future obligation of support;

(C) Order that any unpaid support owed under the previous order is vacated; and

(D) Order that any support previously paid is not subject to refund.

(2) If the name of the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity appears on the birth certificate of the child, the court shall issue an order requiring the birth certificate to be amended to delete the name of the father.

(g) If the test administered under subdivision (e)(1)(A) of this section confirms that the adjudicated father or man deemed to be the father

pursuant to an acknowledgment of paternity is the biological father of the child, the court shall enter an order adjudicating paternity and setting child support in accordance with § 9-10-109, the guidelines for child support, and the family support chart.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., § 777; Acts 1927, No. 111, § 1; Pope's Dig., § 933; Acts 1955, No. 236, § 1; 1979, No. 718, § 1; 1983, No. 177, § 1; A.S.A. 1947, § 34-706; Acts 1993, No. 1242, § 8; 1995, No. 1091, § 3; 1997, No. 1296, § 8; 1999, No. 1514, § 2; 2001, No. 1736, § 1; 2007, No. 60, § 1.

**A.C.R.C. Notes.** As originally enacted, subsection (a) provided: "The chancery court may at any time...." Amendment 80 to the Arkansas Constitution was adopted by voter referendum and became effective July 1, 2001. Amendment 80 established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes

all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

Acts 2007, No. 60, § 1, in amending § 9-10-115(f)(1) deleted the language "relieve him of any future obligation of support as of the date of the finding" without markup. Upon review of the language of the bill as introduced and the language of the amendment to the bill, it was determined that it was the intent of the amendment to replace the missing language with the language that is now subdivision (f)(1)(B). Therefore, the missing language is repealed.

**Amendments.** The 2007 amendment added (f)(1)(B) through (D); redesignated the former provisions of (f)(1) as the introductory language of (f)(1) and (f)(1)(A), and made related changes.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Child Support Supported: Policy Trumps Equity in *Martin v. Pierce* Despite Fraud and a Controversial Amendment to the Paternity Code, 61 Ark. L. Rev. 571.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

## CASE NOTES

### ANALYSIS

Purpose.  
Applicability.  
Authority to Modify.  
Discretion of Court.  
Effect of Amendments.  
Jurisdiction.  
Legislative Intent.  
Modification Denied.  
Motion to Transfer.  
Retroactive Modification.  
Termination.

### Purpose.

The major purpose of Arkansas' filiation laws is to provide a process by which the putative father can be identified so that he may assume his equitable share of the responsibility to his child. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

Previously adjudicated or acknowledged father could not be relieved of past-due child support as this statute only refers to relief from any future obligation of support and the duty to pay child support and other legal obligations is not



suspended while a motion challenging the adjudication of paternity is pending; the legislature did not intend for a previously adjudicated or acknowledged father to be relieved of past-due child support upon a finding that he was actually not the legal father. *State Office of Child Support Enforcement v. Parker*, 368 Ark. 393, 246 S.W.3d 851 (2007).

### **Applicability.**

Because this section should not be applied retroactively, the voluntary acknowledgment of paternity was not conclusive by operation of law under the law as it existed in 1990, and paternity was not established that would trigger the running of the statute of limitations of the former law. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Although this section had been amended, it did not overrule an appellate court decision concluding that the statute did not apply when paternity became an issue after a divorce decree had been entered. *Martin v. Pierce*, 370 Ark. 53, 257 S.W.3d 82 (2007).

Order holding that appellee was not the biological father of a child, setting aside an order of paternity, setting aside orders for child support, and vacating the outstanding amounts of child support was proper because the trial court applied the version of this section in effect at the time the written order was filed. *Wesley v. Hall*, 104 Ark. App. 50, 289 S.W.3d 143 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 496 (Jan. 30, 2009).

### **Authority to Modify.**

A judgment may be modified only by the court which ordered it and not by any other court, especially not by a court of inferior jurisdiction. *Rose v. Mahan*, 29 Ark. App. 93, 777 S.W.2d 864 (1989).

The chancery court did not have the authority to grant a putative father's motion for a paternity test, and later to set aside the paternity judgment, twelve years after the original adjudication of his paternity was entered upon his failure to comply with the testing requirements. *Flemings v. Littles*, 325 Ark. 367, 926 S.W.2d 445 (1996).

### **Discretion of Court.**

The trial court has discretion in assessing the amount of any awards made under

this section. The court, in awarding lying-in expenses or attorney's fees under this section, may exercise its discretion in determining the amount that father should bear, and in doing so, it may even consider the mother's financial means when making an award. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

The claim of child support enforcement against putative father was an original action to establish paternity, as opposed to an action to modify a paternity order under this section, and the judge correctly found paternity pursuant to § 9-10-108(a)(6)(B). *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

### **Effect of Amendments.**

If Acts 1995, No. 1091 were applied to any type of "acknowledgment of paternity" signed before the act's effective date, a new obligation would be created and the man signing the form, by operation of law, would become the father conclusively, when before Acts 1995, No. 1091 was passed, such evidence could only be used as persuasive, presumptive evidence of paternity. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

### **Jurisdiction.**

Default judgment in a child support case should have been set aside because service was unquestionably defective where it was effectuated upon a purported father's brother; therefore, a circuit court abused its discretion when it took any action other than a dismissal of the case under Ark. R. Civ. P. 4(i). The father's subsequent participation in enforcement proceedings, including his act of filing for paternity testing, did not validate the void judgment. *Foury v. Office of Child Support Enforcement*, 99 Ark. App. 341, 260 S.W.3d 328 (2007).

### **Legislative Intent.**

All legislation is intended to act prospectively unless the purpose and intent of the legislature is to give the statutes retroactive effect which is expressly declared or necessarily implied from the language used. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

### **Modification Denied.**

A petition for modification will be denied where the change in financial condi-



tion is due to the fault, voluntary wastage, or dissipation of one's talents or assets, or where the means with which to pay were reduced or eliminated by criminal activity. *Reid v. Reid*, 57 Ark. App. 289, 944 S.W.2d 559 (1997).

### **Motion to Transfer.**

Trial court erred in granting mother's motion to transfer a custody action because there was evidence that the father never established a residence outside of the first county, as contemplated by § 9-10-102(f)(1)(B)(i); thus, on father's motion to vacate, the trial court should have vacated the transfer under subsection (a) of this section rather than grant father a directed verdict under Ark. R. Civ. P. 60(a). *Stephens v. Miller*, 91 Ark. App. 253, 209 S.W.3d 452 (2005).

### **Retroactive Modification.**

Since subsection (d) of this section plainly directs the court to relieve the alleged father of only future obligation of support, an adjudicated father, later determined not to be the biological father, was not entitled to a refund of the support paid. *State v. Phillippe*, 323 Ark. 434, 914 S.W.2d 752 (1996).

An adjudicated father who was shown by scientific evidence not to be the biological father of the child in question was not

entitled to relief from back child support under the statute since there was no evidence or contention that he ever had physical custody of the child, as required by § 9-14-234. *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998).

### **Termination.**

The changes in circumstances which gave rise to a previous modification of support cannot be used again as the basis for termination of support. *Benn v. Benn*, 57 Ark. App. 190, 944 S.W.2d 555 (1997).

Where scientific evidence proves that an adjudicated father is not, in fact, the biological father of the child in question, the statute mandates prospective relief from child support. *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998).

A paternity adjudication in a divorce decree is not affected by subsequent scientific testing which negates paternity. *State Office of Child Support Enforcement v. Williams*, 338 Ark. 347, 995 S.W.2d 338 (1999).

**Cited:** *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *Epperson v. Sharp*, 222 Ark. 456, 261 S.W.2d 267 (1953); *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982).

## **9-10-116. [Repealed.]**

**Publisher's Notes.** This section, concerning chancellor's fees, was repealed by Acts 2003, No. 1185, § 14. The section

was derived from Acts 1879, No. 72, § 4, p. 95; C. & M. Dig., § 785; Pope's Dig., § 941; A.S.A. 1947, § 34-714.

## **9-10-117. [Repealed.]**

**A.C.R.C. Notes.** Former § 9-10-117, concerning appeal to circuit court, is deemed to be superseded by this section. The former section was derived from Acts 1875 (Adj. Sess.), No. 24, § 7, p. 25; C. & M. Dig., § 780; Pope's Dig., § 936; A.S.A. 1947, § 34-709.

**Publisher's Notes.** This section, concerning appeals, was repealed by Acts 2003, No. 1185, § 15. The section was derived from Acts 1989, No. 725, § 5.

## **9-10-118. [Superseded.]**

**A.C.R.C. Notes.** This section, concerning trial de novo on appeal, is deemed to be superseded by § 9-10-117 [repealed]. This section was derived from Acts 1875

(Adj. Sess.), No. 24, § 9, p. 25; C. & M. Dig., § 782; Pope's Dig., § 938; A.S.A. 1947, § 34-711.

**9-10-119. Revival of judgment.**

The judgment may be revived against the executor or administrator of the person against whom the judgment was rendered.

**History.** Acts 1875 (Adj. Sess.), No. 24, § 6, p. 25; C. & M. Dig., § 779; Pope's Dig., § 935; A.S.A. 1947, § 34-708.

**9-10-120. Effect of acknowledgment of paternity.**

(a) A man is the father of a child for all intents and purposes if he and the mother execute an acknowledgment of paternity of the child pursuant to § 20-18-408 or § 20-18-409, or a similar acknowledgment executed during the child's minority.

(b)(1) Acknowledgments of paternity shall by operation of law constitute a conclusive finding of paternity, subject to the modification of orders or judgments under § 9-10-115, and shall be recognized by the chancery courts and juvenile divisions thereof as creating a parent and child relationship between father and child.

(2) Such acknowledgments of paternity shall also be recognized as forming the basis for establishment and enforcement of a child support or visitation order without a further proceeding to establish paternity.

(c) The Department of Health shall offer voluntary paternity establishment services in all of its offices throughout the state. The Department of Health shall coordinate such services with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(d) Upon submission of the acknowledgment of paternity to the Division of Vital Records of the Department of Health, the State Registrar of Vital Records shall accordingly establish a new or amended certificate of birth reflecting the name of the father as recited in the acknowledgment of paternity.

(e) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and the hospital, birthing center, certified nurse practitioner, or licensed midwife delivering the child shall enter into cooperative agreements to compensate at a rate not to exceed twenty dollars (\$20.00) for each acknowledgment of paternity forwarded by the hospital, birthing center, certified nurse practitioner, or licensed midwife to the office.

**History.** Acts 1995, No. 1091, § 1; 1997, No. 1296, § 9.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court..."

## CASE NOTES

## ANALYSIS

Effect of Amendments.  
Time of Execution.

**Effect of Amendments.**

If Acts 1995, No. 1091 were applied to any type of "acknowledgment of paternity" signed before the act's effective date, a new obligation would be created and the person signing the form, by operation of law, would become the father conclusively, when before Acts 1995, No. 1091 was passed, such evidence could only be used

as persuasive, presumptive evidence of paternity. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

**Time of Execution.**

Although §§ 20-18-408 and 20-18-409 were not in effect in 1990 when the "Affidavit of Birth Out of Wedlock" was signed, this section also allows a "similar acknowledgment" to suffice if it is executed during the child's minority. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

## SUBCHAPTER 2 — ARTIFICIAL INSEMINATION

## SECTION.

9-10-201. Child born to married or unmarried woman — Presumptions — Surrogate mothers.

## SECTION.

9-10-202. Supervision by physician — Written agreement.

## RESEARCH REFERENCES

**A.L.R.** Validity and construction of surrogate parenting agreement. 77 A.L.R.4th 70.

Rights and obligations resulting from human artificial insemination. 83 A.L.R.4th 295.

**Am. Jur.** 10 Am. Jur. 2d, Bastards, § 1.  
**Ark. L. Rev.** Artificial Insemination, 23 Ark. L. Rev. 81.

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

### 9-10-201. Child born to married or unmarried woman — Presumptions — Surrogate mothers.

(a) Any child born to a married woman by means of artificial insemination shall be deemed the legitimate natural child of the woman and the woman's husband if the husband consents in writing to the artificial insemination.

(b) A child born by means of artificial insemination to a woman who is married at the time of the birth of the child shall be presumed to be the child of the woman giving birth and the woman's husband except in the case of a surrogate mother, in which event the child shall be that of:

(1) The biological father and the woman intended to be the mother if the biological father is married;

(2) The biological father only if unmarried; or



(3) The woman intended to be the mother in cases of a surrogate mother when an anonymous donor's sperm was utilized for artificial insemination.

(c)(1) A child born by means of artificial insemination to a woman who is unmarried at the time of the birth of the child shall be, for all legal purposes, the child of the woman giving birth, except in the case of a surrogate mother, in which event the child shall be that of:

(A) The biological father and the woman intended to be the mother if the biological father is married;

(B) The biological father only if unmarried; or

(C) The woman intended to be the mother in cases of a surrogate mother when an anonymous donor's sperm was utilized for artificial insemination.

(2) For birth registration purposes, in cases of surrogate mothers the woman giving birth shall be presumed to be the natural mother and shall be listed as such on the certificate of birth, but a substituted certificate of birth may be issued upon orders of a court of competent jurisdiction.

**History.** Acts 1985, No. 904, §§ 1, 2; A.S.A. 1947, §§ 34-720, 34-721; Acts 1989, No. 647, § 1.

#### CASE NOTES

##### **Estoppel.**

Finding that the husband was estopped from denying that twins conceived by artificial insemination were not his was proper even though the written consent required by § 9-10-202(b) had not been obtained because the husband knew the facts and acted as if he agreed to the procedure; further, he accepted the children as his own. *Brown v. Brown*, 83 Ark. App. 217, 125 S.W.3d 840 (2003).

Even though father had been ordered to

pay child support for children conceived through artificial insemination, collateral estoppel did not preclude him from raising the issue of consent in a subsequent action against a physician and a clinic alleging outrage and negligence because the issue was not dispositive in the divorce case. *Brown v. Wyatt*, 89 Ark. App. 306, 202 S.W.3d 555 (2005).

**Cited:** *Brown v. Wyatt*, 89 Ark. App. 306, 202 S.W.3d 555 (2005).

#### **9-10-202. Supervision by physician — Written agreement.**

(a) Artificial insemination of a woman shall only be performed under the supervision of a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Prior to conducting the artificial insemination, the supervising physician shall obtain from the woman and her husband or the donor of the semen a written statement attesting to the agreement to the artificial insemination, and the physician shall certify their signatures and the date of the insemination.

**History.** Acts 1985, No. 904, § 3; A.S.A. 1947, § 34-722.

## CASE NOTES

## ANALYSIS

Estoppel.  
Wrongful Birth.

**Estoppel.**

Finding that the husband was estopped from denying that twins conceived by artificial insemination were not his was proper even though the written consent required by subsection (b) of this section had not been obtained because the husband knew the facts and acted as if he agreed to the procedure; further, he accepted the children as his own. *Brown v.*

*Brown*, 83 Ark. App. 217, 125 S.W.3d 840 (2003).

**Wrongful Birth.**

Summary judgment was properly granted to a physician and a clinic in an outrage claim based on their failure to comply with subsection (b) of this section regarding an artificial insemination procedure on a wife because a wrongful birth action was not cognizable under Arkansas law. *Brown v. Wyatt*, 89 Ark. App. 306, 202 S.W.3d 555 (2005).

**Cited:** *Brown v. Wyatt*, 89 Ark. App. 306, 202 S.W.3d 555 (2005).

## CHAPTER 11

## MARRIAGE

## SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSE AND CEREMONY.
3. MARRIAGE CONTRACTS GENERALLY.
4. ARKANSAS PREMARITAL AGREEMENT ACT.
5. RIGHTS AND PROPERTY OF MARRIED PERSONS.
6. RIGHTS IN REAL ESTATE OF INSANE SPOUSE.
7. VALIDATING ACTS.
8. COVENANT MARRIAGE ACT.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 9-11-101. Marriage a civil contract — Consent of parties.
- 9-11-102. Minimum age — Parental consent.
- 9-11-103. Minimum age — Exception.
- 9-11-104. Minimum age — Lack of parental consent or misrepresentation of age — Annulment.
- 9-11-105. Marriage of underage parties voidable.

## SECTION.

- 9-11-106. Incestuous marriages — Penalties for entering into or solemnizing.
- 9-11-107. Validity of foreign marriages.
- 9-11-108. Presumption of spouse's death — Validity of subsequent marriage.
- 9-11-109. Validity of same-sex marriages.

**Effective Dates.** Acts 1875, No. 102, § 2: effective six months after passage.

Acts 1941, No. 32, § 3: approved Feb. 6, 1941. Emergency clause provided: "Whereas, numerous marital contracts entered into between persons of immature ages continuously create serious domestic

relations problems, and under present conditions the parent has insufficient control over the marriage contract of his minor child, all of which results in confusion, an emergency is declared to exist. This act being for the immediate preservation of public peace, health and safety,

shall be in full force and effect from and after its passage."

Acts 1964 (1st Ex. Sess.), No. 5, § 3: Mar. 26, 1964. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law of this State provides that marriage contracted by a male person under the age of eighteen (18) years or a female person under the age of sixteen (16) years is absolutely void; that there are many persons in this State who were married when one or both parties to the contract were under the ages set out above who believe themselves to be validly married and who have lived together as husband and wife for many years; that the fact that such marriages are declared void by the present laws of this State have resulted in and will continue to result in such persons being deprived of certain privileges and benefits to which such persons would have been entitled had their marriage not been deemed absolutely void by law; and that it is necessary that this inequity be corrected immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1971, No. 145, § 3: approved Feb. 22, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are many cases involving males under the age of eighteen (18) and females under the age of sixteen (16) wherein the female has given birth to a child, but under existing law the underage parties under these circumstances are prohibited from marrying. It is further determined by the General Assembly that where a child has been born to an underage couple that it would be in the interest of the couple, their families and the State of Arkansas that they be permitted to enter into the bonds of marriage. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1973, No. 79, § 3: Feb. 7, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that under the present laws of this State, males

under eighteen (18) years of age cannot contract marriage even with parental consent but that such seventeen (17) year old males are in fact permitted and encouraged to serve in the armed forces of the United States and to do and perform many other acts which demonstrate their maturity; that it is unfair and inequitable to deprive these young men, seventeen (17) years of age of the privilege of contracting marriage and that this Act is designed to correct this situation and should be given effect immediately. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 371, § 3: Mar. 9, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law provides that parental consent is required for the issuance of a marriage license to a male under the age of twenty-one (21) years but is not required in the instance of a female who is over eighteen (18) years of age; that such distinction between males and females is unreasonable and that this act is immediately necessary to grant equal treatment to both the males and females as regards parental consent for obtaining a marriage license. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2008 (1st Ex. Sess.), No. 3, § 5: Apr. 2, 2008. Emergency clause provided: "It is found and determined by the General Assembly that questions concerning the application of Act 441 of 2007 as enacted have arisen, and differing interpretations by the courts and county clerks require the immediate correction and clarification of the law to ensure uniform application of the minimum age requirement for marriage. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: 1. The date of its approval by the Governor; 2. If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or 2. If the bill is vetoed by the



Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 956, § 34: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**A.L.R.** Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

Marriage between persons of the same sex. 81 A.L.R.5th 1.

**Am. Jur.** 52 Am. Jur. 2d, Marriage, § 1 et seq.

**Ark. L. Rev.** Domestic Relations — Annulment by Parents When Minors Are Above Statutory Marriage Age, 8 Ark. L. Rev. 113.

The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

The Cause of Action for Annulment of Marriage in Arkansas, 14 Ark. L. Rev. 85.

The Uniform Marriage and Divorce Act: Analysis for Arkansas, 28 Ark. L. Rev. 175.

**C.J.S.** 2 C.J.S., Adv Poss, § 5.

2A C.J.S., Affdvs, § 26.

3A C.J.S., Alt of Inst, § 66.

6 C.J.S., Apprent, § 6.

12A C.J.S., Burg, § 80.

14A C.J.S., Civil R, § 160.

15A C.J.S., Compr, § 27.

26 C.J.S., Deeds, § 132.

38A C.J.S., Gifts, § 64.

55 C.J.S., Marriage, § 1 et seq.

65 C.J.S., Names, §§ 5-8.

94 C.J.S., Wills, § 253.

### CASE NOTES

#### Reputation.

Where record evidence had been destroyed by fire, reputation of marriage was admissible to establish legitimacy of

issue. *Farmer v. Towers*, 106 Ark. 123, 152 S.W. 993 (1913).

**Cited:** *Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979).

### 9-11-101. Marriage a civil contract — Consent of parties.

Marriage is considered in law a civil contract to which the consent of the parties capable in law of contracting is necessary.

**History.** Rev. Stat., ch. 94, § 1; C. & M. Dig., § 7036; Pope's Dig., § 9016; A.S.A. 1947, § 55-101.

## CASE NOTES

## ANALYSIS

Common-Law Marriage.

Consent of Parties.

Presumptions.

Regulation.

### Common-Law Marriage.

A common-law marriage is invalid in this state. *Furth v. Furth*, 97 Ark. 272, 133 S.W. 1037 (1911).

### Consent of Parties.

If a man marries a woman through fear of the consequences of seduction, the marriage will, nevertheless, be valid. *Honnett v. Honnett*, 33 Ark. 156 (1878); *Marvin v. Marvin*, 52 Ark. 425, 12 S.W. 875 (1890).

### Presumptions.

Where a man and woman are living

together as husband and wife, a valid marriage is presumed. *Fountain v. Fountain*, 80 Ark. 481, 97 S.W. 656 (1906); *Darling v. Dent*, 82 Ark. 76, 100 S.W. 747 (1907).

Where a married man and a woman held themselves out as husband and wife, before and after his divorce, there was no presumption of a legal marriage. *O'Neill v. Davis*, 88 Ark. 196, 113 S.W. 1027 (1908).

### Regulation.

Marriage is more than only a civil contract; it is a social and domestic relation subject to regulation under the state's police power. *Dodson v. State*, 61 Ark. 57, 31 S.W. 977 (1895).

## 9-11-102. Minimum age — Parental consent.

(a) Every male who has arrived at the full age of seventeen (17) years and every female who has arrived at the full age of sixteen (16) years shall be capable in law of contracting marriage.

(b)(1) However, males and females under the age of eighteen (18) years shall furnish the clerk, before the marriage license can be issued, satisfactory evidence of the consent of the parent or parents or guardian to the marriage.

(2)(A) The consent of both parents of each contracting party shall be necessary before the marriage license can be issued by the clerk unless the parents have been divorced and custody of the child has been awarded to one (1) of the parents exclusive of the other, or unless the custody of the child has been surrendered by one (1) of the parents through abandonment or desertion, in which cases the consent of the parent who has custody of the child shall be sufficient.

(B) The consent of the parent may be voided by the order of a circuit court on a showing by clear and convincing evidence that:

- (i) The parent is not fit to make decisions concerning the child; and
- (ii) The marriage is not in the child's best interest.

(c) There shall be a waiting period of five (5) business days for any marriage license issued under subdivision (b)(2) of this section.

(d) If a child has a pending case in the circuit court, a parent who files consent under subsection (b) of this section shall immediately notify the circuit court, all parties, and attorneys to the pending case.

**History.** Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1;

1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-

102; Acts 2007, No. 441, § 1; 2008 (1st Ex. Sess.), No. 3, § 1; 2009, No. 956, § 4.

**Amendments.** The 2007 amendment rewrote (a) and (b) and added (c).

The 2008 (1st Ex. Sess.) amendment rewrote the section.

The 2009 amendment inserted (b)(2)(B), redesignated the existing text of (b)(2) accordingly, and made a related change; and added (c) and (d).

## CASE NOTES

### ANALYSIS

Out-of-State Marriage.  
Parental Consent.

#### Out-of-State Marriage.

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

#### Parental Consent.

The Arkansas Code Revision Commission exceeded its authority when it altered the language of subsection (b) of this section to limit the right of a parent to consent to the marriage of a minor child. *Porter v. Ark. Dep't of HHS*, 374 Ark. 177, 286 S.W.3d 686 (2008).

**Cited:** *Barnett v. State*, 35 Ark. 501 (1880).

### 9-11-103. Minimum age — Exception.

(a)(1) If an application for a marriage license is made where one (1) or both parties are under the minimum age prescribed in § 9-11-102 and the female is pregnant, both parties may appear before a judge of the circuit court of the district where the application for a marriage license is being made.

(2) Evidence shall be submitted as to:

(A) The pregnancy of the female in the form of a certificate from a licensed and regularly practicing physician of the State of Arkansas;

(B) The birth certificates of both parties; and

(C) Parental consent of each party who may be under the minimum age.

(3) Thereupon, after consideration of the evidence and other facts and circumstances, if the judge finds that it is to the best interest of the parties, the judge may enter an order authorizing and directing the county clerk to issue a marriage license to the parties.

(4) The county clerk shall retain a copy of the order on file in the clerk's office with the other papers.

(b) However, if the female has given birth to the child, the court before whom the parties are to appear, if satisfied that it would be to the best interests of all the interested parties and if all the requirements of subsection (a) of this section are complied with, with the exception of the physician's certificate as to the pregnancy, may enter an order authorizing and directing the county clerk to issue a marriage license as provided in subsection (a) of this section.

**History.** Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No.

5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-102; Acts 2007, No. 441, § 2; 2008 (1st Ex. Sess.), No. 3, § 2.



**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2007 amendment, in (a)(1), deleted "an application for a marriage license is made where" following "if", inserted "of the" following "both", inserted "to a contract for marriage or application for a marriage license", substituted "a party who has not obtained parental consent under § 9-11-102" for "both parties", and substituted "circuit court judge in" for "judge of the circuit

court of"; rewrote (a)(2); in (a)(3), substituted "The circuit court judge" for "Thereupon", substituted "considering" for "consideration of", deleted "if the judge finds that it is to the best interest of the parties, the judge" following "circumstances" and added "if the circuit court judge finds that issuance of a marriage license is in the best interests of the parties"; in (a)(4), inserted "circuit court judge's" and inserted "county" before "clerk's"; inserted the (b)(1) designation; rewrote (b)(1); and added (b)(2) through (b)(4).

The 2008 (1st Ex. Sess.) amendment rewrote the section.

**Cross References.** County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

## CASE NOTES

### Out-of-State Marriages.

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of

the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

**Cited:** *Barnett v. State*, 35 Ark. 501 (1880).

## 9-11-104. Minimum age — Lack of parental consent or misrepresentation of age — Annulment.

In all cases in which the consent of the parent or parents or guardian is not provided, or there has been a misrepresentation of age by a contracting party, the marriage contract may be set aside and annulled upon the application of the parent or parents or guardian to the circuit court having jurisdiction of the cause.

**History.** Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No.

5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-102.

## CASE NOTES

### ANALYSIS

Discretion of Court.

Evidence of Nonconsent.

Out-of-State Marriage.

Pregnancy.

Unclean Hands Doctrine.

### Discretion of Court.

If parental consent is required for underage male or female, the trial court is

entitled to exercise its discretion in determining whether marriage is to be set aside, since phrase "may be set aside" is used. *Mitchell v. Mitchell*, 219 Ark. 69, 239 S.W.2d 748 (1951).

Trial court did not abuse its discretion in refusing to set aside marriage where parties were underage, if neither party testified. *Mitchell v. Mitchell*, 219 Ark. 69, 239 S.W.2d 748 (1951).

**Evidence of Nonconsent.**

Evidence by parents of nonconsent to marriage was admissible under complaint by father to annul marriage of daughter where complaint alleged that daughter was underage and marriage was void. *Warner v. Warner*, 221 Ark. 939, 256 S.W.2d 734 (1953).

**Out-of-State Marriage.**

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

**Pregnancy.**

Annulment of marriage of minor under

the age of consent is not contrary to public policy notwithstanding wife's pregnancy. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

**Unclean Hands Doctrine.**

Theory of unclean hands is not applicable to action to annul marriage on grounds of nonage, even though party seeking relief made false statement as to age in affidavit for marriage. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

**Cited:** *Barnett v. State*, 35 Ark. 501 (1880).

**9-11-105. Marriage of underage parties voidable.**

(a) The marriage of any male under the full age of seventeen (17) years and the marriage of any female under the full age of sixteen (16) years is voidable.

(b) All marriages contracted prior to March 26, 1964, where one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are declared to be voidable only and shall be valid for all intents and purposes unless voided by a court of competent jurisdiction.

(c) All marriages contracted between July 30, 2007, and April 2, 2008, in which one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are voidable only and are valid for all intents and purposes unless voided by a court of competent jurisdiction.

**History.** Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, §§ 1, 2; 1971, No. 145, § 1; 1973, No.

79, § 1; 1981, No. 371, § 1; A.S.A. 1947, §§ 55-102, 55-102.1; Acts 2008 (1st Ex. Sess.), No. 3, § 4.

**Amendments.** The 2008 (1st Ex. Sess.) amendment added (c).

**CASE NOTES****Out-of-State Marriage.**

Though the marriage of an underage person is void by the laws of this state, if the person is married in another state where the common law prevails the marriage will be deemed valid here. *Barnett v. State*, 35 Ark. 501 (1880) (decision prior to 1964 amendment).

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

**Cited:** *Mitchell v. Mitchell*, 219 Ark. 69, 239 S.W.2d 748 (1951).

### 9-11-106. Incestuous marriages — Penalties for entering into or solemnizing.

(a) All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, and between aunts and nephews, and between first cousins are declared to be incestuous and absolutely void. This section shall extend to illegitimate children and relations.

(b) Whoever contracts marriage in fact, contrary to the prohibitions of subsection (a) of this section, and whoever knowingly solemnizes the marriage shall be deemed guilty of a misdemeanor and shall upon conviction be fined or imprisoned, or both, at the discretion of the jury who shall pass on the case, or if the conviction shall be by confession, or on demurrer, then at the discretion of the court.

**History.** Rev. Stat., ch. 94, §§ 3, 9; Acts 1875, No. 102, § 1, p. 221; C. & M. Dig., §§ 7038, 7045; Pope's Dig., §§ 9018, 9025; Acts 1973, No. 253, § 1; A.S.A. 1947, §§ 55-103, 55-105.

**Cross References.** Incest, § 5-26-202.

### CASE NOTES

#### First Cousins.

A marriage between first cousins does not create "much social alarm," so that the marriage will be recognized if it was valid by the law of the state in which it took place. *Etheridge v. Shaddock*, 288 Ark. 481, 706 S.W.2d 395 (1986).

Where after divorce and awarding of custody of children to father, he married

his first cousin and when they discovered that such marriages were prohibited in Arkansas had such marriage annulled and got married in state permitting such marriages and returned to Arkansas, such remarriage was not a sufficient basis for change of custody. *Etheridge v. Shaddock*, 288 Ark. 481, 706 S.W.2d 395 (1986).

### 9-11-107. Validity of foreign marriages.

(a) All marriages contracted outside this state that would be valid by the laws of the state or country in which the marriages were consummated and in which the parties then actually resided shall be valid in all the courts in this state.

(b) This section shall not apply to a marriage between persons of the same sex.

**History.** Rev. Stat., ch. 94, § 7; C. & M. Dig., § 7043; Pope's Dig., § 9023; A.S.A. 1947, § 55-110; Acts 1997, No. 144, § 2.

### RESEARCH REFERENCES

**Ark. L. Notes.** Watkins, A Guide to Choice of Law in Arkansas, 2005 Arkansas L. Notes 151.



## CASE NOTES

## ANALYSIS

Common-Law Marriages.  
Indian Territory.

**Common-Law Marriages.**

A common-law marriage contracted in another state, and valid there, is valid here. *Darling v. Dent*, 82 Ark. 76, 100 S.W. 747 (1907); *Evatt v. Miller*, 114 Ark. 84, 169 S.W. 817 (1914); *Estes v. Merrill*, 121 Ark. 361, 181 S.W. 136 (1915).

Where parties cohabited in Arkansas and temporarily sojourned in a state where common-law marriage was recognized, they could not by that conduct alone become legally man and wife. *Walker v. Yarbrough*, 257 Ark. 300, 516 S.W.2d 390 (1974).

Common-law marriages are not permitted in Arkansas, but the state will recognize marriages contracted in another state which are valid by the laws of that state. One seeking to prove the existence of a valid common-law marriage in another state must do so by a preponderance of the evidence. *Knaus v. Relyea*, 24 Ark. App. 7, 746 S.W.2d 389 (1988).

Residency in a state in which a common law marriage may be created is necessary for the recognition of the common law marriage in Arkansas. *Brissett v. Sykes*, 313 Ark. 515, 855 S.W.2d 330 (1993).

Trial court properly found that there

was no common law marriage between a decedent and his alleged spouse, who had lived together in Alberta, Canada, because Alberta statutory law did not recognize such marriages and the decedent and alleged wife had not lived as married for three years in order to meet the Alberta case law definition; hence, under subsection (a) of this section there was no valid marriage that could be recognized in Arkansas. *Craig v. Carrigo*, 353 Ark. 761, 121 S.W.3d 154 (2003).

Circuit court did not clearly err in finding that no common-law marriage existed between the parties, because the parties lived in Arkansas, which did not recognize common-law marriages, the wedding ceremony took place in Texas without obtaining a marriage license or certificate, and there was no evidence that the parties lived together in Texas after the ceremony. *Crane v. Taliaferro*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 360 (Apr. 29, 2009).

**Indian Territory.**

Laws relating to marriage in the Indian Territory must be proved. *Johnson v. State*, 60 Ark. 45, 28 S.W. 792 (1894).

**Cited:** *Bickford v. Carden*, 215 Ark. 560, 221 S.W.2d 421 (1949); *Stilley v. Stilley*, 219 Ark. 813, 244 S.W.2d 958 (1952); *May v. Daniels*, 359 Ark. 100, 194 S.W.3d 771 (2004).

**9-11-108. Presumption of spouse's death — Validity of subsequent marriage.**

In all cases in which any husband abandons his wife, or a wife her husband, and resides beyond the limits of this state for the term of five (5) successive years, without being known to the other spouse to be living during that time, the abandoning party's death shall be presumed. Any subsequent marriage entered into after the end of the five (5) years shall be as valid as if the husband or wife were dead.

**History.** Rev. Stat., ch. 94, § 8; C. & M. Dig., § 7044; Pope's Dig., § 9024; A.S.A. 1947, § 55-109.

**Cross References.** Presumption of death, § 16-40-105.

# CASE NOTES

## ANALYSIS

Abandonment.  
Burden of Proof.  
Presumptions.

### Abandonment.

Evidence inconsistent with the theory of abandonment. *Cole v. Cole*, 249 Ark. 824, 462 S.W.2d 213 (1971).

### Burden of Proof.

It is settled that neither the fact of death nor that of absence from the state can be inferred from the bare fact of a disappearance. Petitioner has the burden of producing evidence from which the court might fairly conclude that first hus-

band had lived continuously outside the state for at least five years before the petitioner's second marriage. *Baxter v. Baxter*, 232 Ark. 151, 334 S.W.2d 714 (1960).

### Presumptions.

Where the presumption of death was overcome by substantial evidence, the court was warranted in finding the subsequent marriage invalid. *Goset v. Goset*, 112 Ark. 47, 164 S.W. 759 (1914).

Presumption in favor of validity of second marriage does not apply if separation from first wife was by mutual consent. *Watson v. Palmer*, 219 Ark. 178, 240 S.W.2d 875 (1951).

## 9-11-109. Validity of same-sex marriages.

Marriage shall be only between a man and a woman. A marriage between persons of the same sex is void.

**History.** Acts 1997, No. 144, § 1.

## SUBCHAPTER 2 — LICENSE AND CEREMONY

### SECTION.

- 9-11-201. Licenses required.
- 9-11-202. Form of license.
- 9-11-203. Issuance by clerks.
- 9-11-204. Issuance of license unlawfully — Penalty.
- 9-11-205. Notice of intention to wed — Noncompliance, penalties, and effect.
- 9-11-206. Clerk's fees.
- 9-11-207. Applicants for marriage licenses to be sober.
- 9-11-208. License not issued to persons of the same sex.
- 9-11-209. Proof of age — Parental consent.
- 9-11-210. Bond of applicant.
- 9-11-211. Military personnel — Waiver of certain license requirements — Proceedings.
- 9-11-212. Application without other's consent — Penalties — Damages.

### SECTION.

- 9-11-213. Persons who may solemnize marriages.
- 9-11-214. Recordation of credentials of clerical character.
- 9-11-215. Marriage ceremony.
- 9-11-216. Solemnization contrary to law — Penalty.
- 9-11-217. Failure to sign and return license at time of marriage — Penalty.
- 9-11-218. Return of executed license to clerk — Effect on bond.
- 9-11-219. False return or record — Penalty.
- 9-11-220. Duty of clerk on return of license — Issuance of certificate.
- 9-11-221. Certified copies of record as evidence.

**Cross References.** Marriage license fees, generally, § 14-20-111.

Marriage license fees, miscellaneous county clerk fees, § 21-6-406.

Marriage registration, § 20-18-501.

**Effective Dates.** Acts 1843, p. 55, § 3: Apr. 1, 1843.

Acts 1873, No. 2, § 4: effective on passage, provided the penalty prescribed in the act should not be enforced within 60 days.

Acts 1875, No. 127, § 10: effective 30 days after passage.

Acts 1885, No. 123, § 2: effective on passage.

Acts 1901, No. 123, § 3: effective on passage.

Acts 1941, No. 404, § 3: approved Mar. 27, 1941. Emergency clause provided: "It being found by the General Assembly that this act is necessary for the better living conditions of the people of Arkansas and this act being necessary for the preservation of the public health, peace and safety, an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1945, No. 112, § 7: approved Feb. 27, 1945. Emergency clause provided: "Due to prevailing conditions the need for such a law is urgent, therefore, it is necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and this act shall take effect and be in force from and after its passage."

Acts 1967, No. 380, § 4: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are many residents of this State of marriageable age in the Armed Forces of the United States; that such persons' furloughs are often too short to permit an Arkansas marriage because of the many and cumbersome requirements of Arkansas law; that it is necessary that these requirements be waived to give special consideration to those persons who are residents of this State but who are on active duty in the Armed Forces of the United States; and that in order to remedy these onerous requirements of Arkansas in the case of military personnel and to encourage Arkansas marriages, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation

of the public peace, health and safety of this State shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 419, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law requires marriage license applications to be signed by at least one person other than the applicant; that such law is unduly burdensome and in need of revision; and that this Act is immediately necessary to provide such revision. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 862, § 5: Mar. 27, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current law relating to persons who may solemnize marriages is unclear with respect to the authority of some judges; that unless the ambiguity is corrected immediately, marriages by such judges may be the subject of controversy and may leave the validity of some marriages in doubt; that this act is designed to clarify this ambiguity and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2008 (1st Ex. Sess.), No. 3, § 5: Apr. 2, 2008. Emergency clause provided: "It is found and determined by the General Assembly that questions concerning the application of Act 441 of 2007 as enacted have arisen, and differing interpretations by the courts and county clerks require the immediate correction and clarification of the law to ensure uniform application of the minimum age requirement for marriage. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be



come effective on: 1. The date of its approval by the Governor; 2. If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or 2. If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

**A.L.R.** Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**Am. Jur.** 52 Am. Jur. 2d, Marriage, §§ 3, 9 et seq.

**Ark. L. Rev.** The Uniform Marriage and Divorce Act: Analysis for Arkansas, 28 Ark. L. Rev. 175.

**C.J.S.** 55 C.J.S., Marriage, § 24 et seq.

9-11-201. Licenses required.

- (a) All persons hereafter contracting marriage in this state are required to first obtain a license from the clerk of the county court of some county in this state.
- (b) On and after July 1, 1997, the county clerk shall record the social security numbers of the persons obtaining a marriage license on the marriage license application or the coupon for the marriage license. If an applicant does not possess a social security number, the clerk shall note this representation on the marriage license application or the coupon for the marriage license.
- (c)(1) The county clerk shall transmit social security numbers of marriage license applicants to the Bureau of Vital Statistics of the Department of Health. The clerk is not required to otherwise maintain or report the social security numbers of marriage license applicants. Compliance with the social security number reporting requirements of this section by the clerk of the county court shall be deemed to satisfy licensing entity reporting requirements under this section relative to marriage licenses.
- (2) The bureau shall allow the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration access to such social security information and on an automated basis to the maximum extent feasible.

**History.** Acts 1875, No. 127, § 1, p. 260; C. & M. Dig., § 7057; Pope’s Dig., § 9039; A.S.A. 1947, § 55-201; Acts 1997, No. 1163, § 2; 1997, No. 1296, § 41.

**A.C.R.C. Notes.** Acts 1997, No. 1296 added material in addition to that which was added by Acts 1997, No. 1163. Therefore, the two amendments were merged pursuant to § 1-2-303.

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1,

2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes “all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts....”

**Cross References.** County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

# CASE NOTES

## ANALYSIS

Foreign License.

Presumption of Legitimacy of Children.

### Foreign License.

Arkansas residents may legally contract marriage in Arkansas with a license issued by a foreign state since the statute providing for an Arkansas marriage license for persons contracting marriage in the state is directory and not mandatory, so that a marriage was valid when performed by a duly qualified minister on the Arkansas side of Texarkana for parties who were licensed on the Texas side of the

city. *De Potty v. De Potty*, 226 Ark. 881, 295 S.W.2d 330 (1956).

### Presumption of Legitimacy of Children.

The presumption of legitimacy of children born during wedlock is not overcome by evidence that a marriage license for the parents was never issued or recorded, since marriage license statutes are merely directory and not mandatory, and, although this section provides for the procurement of a license by those contracting marriage, Arkansas has no statute providing that a marriage is void when no license is obtained. *Wright v. Vales*, 1 Ark. App. 175, 613 S.W.2d 850 (1981).

## 9-11-202. Form of license.

(a) The license may be in the following form:

"State of Arkansas,

County of .....

To any person authorized by law to solemnize marriage:

You are hereby commanded to solemnize the rites and publish the banns of matrimony between A. B., age ..... years, and D. C., age ..... years, according to law, and officially sign and return this license to the parties herein named.

Witness my hand and official seal, this ..... day of ....., 20.....  
[L. S.]

\_\_\_\_\_  
A. B., County Clerk"

(b) The party solemnizing the rites of matrimony shall endorse on the license his or her certificate of that fact in the following form:

"State of Arkansas,

County of ..... ss

I, A. B., do hereby certify that on the ..... day of ....., 20....., I did duly, and according to law as commanded in the foregoing license, solemnize the rites and publish the banns of matrimony between the parties herein named.

Witness my hand this .... day of ....., 20 .....

\_\_\_\_\_  
A. B., Justice of the Peace"

(Or insert whatever title the party has, as minister, etc.)

(c) If the parties intend to contract a covenant marriage, the application for a marriage license must also include the following statement completed by at least one (1) of the two (2) parties:

"We, [insert name of spouse] and [insert name of spouse], declare our intent to contract a covenant marriage and accordingly have executed the attached declaration of intent."

**History.** Acts 1875, No. 127, § 3, p. 260; C. & M. Dig., § 7060; Pope's Dig., § 9042; A.S.A. 1947, § 55-204; Acts 2001, No. 1486, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

**Cross References.** County offices defined, § 14-14-603.

Covenant Marriage Act, § 9-11-801 et seq.

Distribution powers of county governments, § 14-14-502.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

### 9-11-203. Issuance by clerks.

(a) The clerks of the county courts of the several counties in this state are required to furnish the license upon:

(1) Application's being made;

(2) Being fully assured that applicants are lawfully entitled to the license; and

(3) Receipt of his or her fee.

(b) It shall be lawful for clerks of the circuit courts to issue marriage licenses in counties having two (2) judicial districts.

(c)(1) In addition to the standard certificate of marriage issued under subsection (a) of this section, the county clerk shall offer and, upon payment of a fee established by regulation promulgated by the State Child Abuse and Neglect Prevention Board, issue an heirloom certificate of marriage.

(2)(A) The board shall adopt regulations for the design of the heirloom certificate and shall print and distribute the certificates to each county clerk in this state.

(B)(i) The board shall set the amount of the fee for the heirloom certificates to exceed the estimated actual costs for the development and distribution of the certificates but not to exceed the estimated fair market value of a comparable artistic rendition.

(ii) The fee is in addition to any other fee established by law for the issuance of a certificate of marriage.

(iii) The additional fees from the sale of heirloom certificates shall be transmitted monthly by the county clerk to the Treasurer of State for deposit into the State Treasury to the credit of the Children's Trust Fund.

(3)(A) The heirloom certificate shall be in a form consistent with the need to protect the integrity of vital records and suitable for display.

(B) It may bear the seal of the state and may be signed by the Governor.

(4) An heirloom certificate of marriage issued under this subsection has the same status as evidence as the standard certificate of marriage issued under subsection (a) of this section.



(5) Heirloom certificates may be issued for any marriage certificate issued at any time in this state, whether before or after August 13, 2001.

**History.** Acts 1875, No. 127, § 2, p. 260; 1901, No. 123, § 1, p. 194; C. & M. Dig., §§ 7058, 7059; Pope's Dig., §§ 9040, 9041; A.S.A. 1947, §§ 55-202, 55-203; Acts 2001, No. 968, § 1.

**A.C.R.C. Notes.** As amended by Acts 2001, No. 968, subdivision (c)(2)(A) contained an additional sentence which read: "The board may expend up to twenty-five thousand dollars (\$25,000) of money appropriated from the Children's Trust Fund for the printing, distribution, and promotion of the heirloom certificates during the biennial period ending June 30, 2003."

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Cross References.** Additional county fee on marriage licenses, § 14-20-111.

County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

### 9-11-204. Issuance of license unlawfully — Penalty.

If any county clerk in this state shall issue any license contrary to the provisions of this act, or to any persons who are declared by law as not entitled to the license, he or she shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

**History.** Acts 1875, No. 127, § 8 (1st part), p. 260; C. & M. Dig., § 7065; Pope's Dig., § 9047; A.S.A. 1947, § 55-214.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cogni-

zable by Circuit, Chancery, Probate and Juvenile Courts...."

**Meaning of "this act".** Acts 1875, No. 127, codified as §§ 9-11-201 — 9-11-204, 9-11-209, 9-11-210, 9-11-212, 9-11-216 — 9-11-218, and 9-11-220.

**Cross References.** County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

### 9-11-205. Notice of intention to wed — Noncompliance, penalties, and effect.

(a) No marriage license shall be issued by the clerks unless a notice of intention to wed shall have been signed by both of the applicants applying for the marriage license and filed with the county clerk where the license is obtained.

(b) The notice shall state the name, age, and address of both parties desiring to wed.

(c) The county clerk shall verify the age of both parties and may treat birth certificates as prima facie proof of age.

(d) The notice of intention to wed referred to in this section shall be filed with the county clerk of the county where the marriage license is obtained.

(e) The county clerk may destroy the notice of intention to wed one (1) year after the date of its issuance.

(f) Upon the failure on the part of the county clerk or any other person to comply with the provisions of this section, he or she shall be adjudged guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(g) No marriage shall be void for failure to comply with the provisions of this section.

(h) If applicable, the notice of intention to wed shall contain the declaration of intent for a covenant marriage as provided in the Covenant Marriage Act of 2001, § 9-11-801 et seq.

**History.** Acts 1945, No. 112, §§ 1, 3-5; 1957, No. 119, § 1; 1959, No. 52, § 1; 1981, No. 788, § 1; 1983, No. 712, § 1; A.S.A. 1947, §§ 55-205, 55-207 — 55-209; Acts 2001, No. 1486, § 2.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Cross References.** Content of declaration of intent, § 9-11-804.

County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

### 9-11-206. Clerk's fees.

The fee prescribed by law for the issuance of the marriage license shall be paid to the clerk at the time the applicants apply for the marriage license and sign the notice of intention to wed.

**History.** Acts 1945, No. 112, § 1; 1959, No. 52, § 1; 1981, No. 788, § 1; 1983, No. 712, § 1; A.S.A. 1947, § 55-205.

fees, generally, § 14-20-111.

Marriage license fees, miscellaneous county clerk fees, § 21-6-406.

**Cross References.** Marriage license

### 9-11-207. Applicants for marriage licenses to be sober.

It shall be unlawful for any clerk who is authorized to issue marriage licenses to furnish or sell to any person or persons a license to marry at a time when either of the contracting parties is visibly under the influence of intoxicating drinks or under the influence of any kind of drugs. The parties applying for the license shall at the time be duly sober.

**History.** Acts 1941, No. 404, § 1; A.S.A. 1947, § 55-210.

**9-11-208. License not issued to persons of the same sex.**

(a) It shall be the declared public policy of the State of Arkansas to recognize the marital union only of man and woman. No license shall be issued to persons to marry another person of the same sex and no same-sex marriage shall be recognized as entitled to the benefits of marriage.

(b) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by persons of the same sex, when a marriage license is issued by another state or by a foreign jurisdiction, shall be void in Arkansas, and any contractual or other rights granted by virtue of that license, including its termination, shall be unenforceable in the Arkansas courts.

(c) However, nothing in this section shall prevent an employer from extending benefits to persons who are domestic partners of employees.

(d) No license shall be issued to persons to marry unless and until the female shall attain the age of sixteen (16) years and the male the age of seventeen (17) years and then only by written consent by a parent or guardian until the male shall have attained the age of eighteen (18) years and the female the age of eighteen (18) years.

**History.** Acts 1941, No. 404, § 2; A.S.A. 1947, § 55-211; Acts 1997, No. 146, §§ 1, 2; 2007, No. 441, § 3; 2008 (1st Ex. Sess.), No. 3, § 3.

**A.C.R.C. Notes.** Former § 9-11-222 was added to this section as present sub-

section (c) pursuant to § 1-2-303(d)(4).

**Amendments.** The 2007 amendment deleted former (a) relating to age.

The 2008 (1st Ex. Sess.) amendment added (d).

**9-11-209. Proof of age — Parental consent.**

(a) Any person applying for the license to marry another may introduce the parent or guardian of himself or herself or the other party, or the certificate of the parent or guardian duly attested, to prove to the satisfaction of the clerk that the parties to the marriage are of lawful age.

(b) In case either or both of the parties to the marriage are not of lawful age, it shall be the duty of the clerk, before issuing the license to require the party applying therefor to produce satisfactory evidence of the consent and willingness of the parent or guardian of the party to the marriage which shall consist of either verbal or written consent thereto.

(c) If there are any doubts in the mind of the clerk as to the evidence of the consent and willingness of the parent or guardian of the party applying for the license or if the clerk is in doubt as to the true age of the party so making application, the clerk may require the applicants to furnish a copy of their birth certificates as proof of lawful age or may require the parties to make affidavit to the genuineness of the consent granted or to the correctness of the ages given. The affidavit so made shall be filed in the clerk's office for public inspection.



**History.** Acts 1875, No. 127, § 5, p. 260; 1885, No. 123, § 1, p. 200; C. & M. Dig., § 7062; Pope's Dig., § 9044; Acts 1963, No. 117, § 1; A.S.A. 1947, § 55-212.

## CASE NOTES

### ANALYSIS

Purpose.  
Annulment.  
Perjury.

#### **Purpose.**

This section was enacted for the protection of the county clerk and has nothing whatever to do with the annulment of marriages for failure to first obtain consent of parents or guardians. *Witherington v. Witherington*, 200 Ark. 802, 141 S.W.2d 30 (1940).

#### **Annulment.**

False statement as to age in affidavit for marriage license did not estop affiant from seeking to annul the marriage on ground of nonage. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

#### **Perjury.**

Making false affidavit for license is perjury. *Cox v. State*, 164 Ark. 126, 261 S.W. 303 (1924).

### **9-11-210. Bond of applicant.**

(a) Any person applying for a license under the provisions of this act shall be required to enter into bond to the State of Arkansas in the penal sum of one hundred dollars (\$100) for the use of and benefit of the general fund of the county to ensure that the parties applying have a lawful right to the license and that they will faithfully carry into effect and comply with the provisions of this act.

(b) The bond shall be void when the license is duly returned to the office of the county clerk, duly executed and officially signed by someone authorized by law to solemnize the rites of matrimony.

**History.** Acts 1875, No. 127, § 4, p. 260; C. & M. Dig., § 7061; Pope's Dig., § 9043; Acts 1983, No. 419, § 1; A.S.A. 1947, § 55-213; Acts 1999, No. 1540, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Meaning of "this act".** See note to § 9-11-204.

**Cross References.** County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

### **9-11-211. Military personnel — Waiver of certain license requirements — Proceedings.**

(a)(1) Upon written petition being filed with the county clerk of any county in this state, the county court, after hearing, may in its discretion waive by written order the requirement of bond, as prescribed by § 9-11-210, and the consent of parents, as required by §§ 9-11-102 — 9-11-105. The court may authorize and direct the county clerk to forthwith issue a license to marry to any resident of this state who is on active duty with the armed forces of the United States of

America or to any resident of this state to marry a person who is on active duty with the armed forces of the United States of America.

(2) Nothing in this section is to be considered as reducing the statutory marriageable age of females not in the military service.

(b)(1) The petition shall be signed and properly verified by both the parties seeking the license to marry and shall be styled "In the Matter of the Issuance of a Marriage License to a Member of the Armed Forces of the United States of America".

(2) The petition shall set out the full name and address of each party, the military serial number of the service man or woman, rank, and military organization to which he or she is attached.

(3) The birth certificate of the nonservice man or woman shall be attached to the petition as an exhibit.

(4) The parties shall personally appear before the court, and the service man or woman will appear in uniform and exhibit to the court his or her military identification card.

(5) The parties will be required to execute the notice of intention to wed as prescribed by § 9-11-205 and file the notice with the county clerk.

(c) The county courts of this state for the purpose of this section shall be open and in session during regular office hours.

**History.** Acts 1967, No. 380, §§ 1-3; A.S.A. 1947, §§ 55-247 — 55-249.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Cross References.** County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

### **9-11-212. Application without other's consent — Penalties — Damages.**

(a) If any person shall apply for and obtain a license to marry another, without first obtaining the consent of that party, the person shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). The fines, when collected, shall be paid into the general fund of the county wherein the offense is tried.

(b) The party so doing shall moreover be liable to the party injured in any sum that a court or jury of competent jurisdiction may adjudge for damages.

**History.** Acts 1875, No. 127, § 7, p. § 9046; A.S.A. 1947, § 55-215; Acts 1999, 260; C. & M. Dig., § 7064; Pope's Dig., No. 1540, § 2.

### 9-11-213. Persons who may solemnize marriages.

(a) For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons:

- (1) The Governor;
- (2) Any former justice of the Supreme Court;
- (3) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) years or more;
- (4) Any justice of the peace, including any former justice of the peace who served at least two (2) terms since the passage of Arkansas Constitution, Amendment 55;
- (5) Any regularly ordained minister or priest of any religious sect or denomination;
- (6) The mayor of any city or town;
- (7) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or
- (8) Any elected district court judge and any former municipal or district court judge who served at least four (4) years.

(b)(1) Marriages solemnized through the traditional rite of the Religious Society of Friends, more commonly known as Quakers, are recognized as valid to all intents and purposes the same as marriages otherwise contracted and solemnized in accordance with law.

(2) The functions, duties, and liabilities of a party solemnizing marriage, as set forth in the marriage laws of this state, in the case of marriages solemnized through the traditional marriage rite of the Religious Society of Friends shall be incumbent upon the clerk of the congregation or, in his or her absence, his or her duly designated alternate.

**History.** Rev. Stat., ch. 94, § 10; Acts 1873, No. 2, § 1, p. 2; C. & M. Dig., § 7046; Pope's Dig., § 9026; Acts 1947, No. 231, § 1; 1977, No. 95, § 2; 1979, No. 693, § 1; 1983, No. 850, § 1; A.S.A. 1947, § 55-216; Acts 1987, No. 394, § 1; 1997, No. 862, § 1; 2001, No. 1068, § 1; 2003, No. 1185, § 16; 2007, No. 98, § 1.

**A.C.R.C. Notes.** With respect to the duties of persons solemnizing marriages, see also § 20-18-501.

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts

of original jurisdiction. Section 19(b)(2) conferred on district courts, "the jurisdiction vested in Municipal Corporation Courts, Police Courts, Justice of the Peace Courts, and Courts of Common Pleas at the time this Amendment takes effect," and state that district courts shall assume the jurisdiction of these courts of limited jurisdiction on January 1, 2005.

**Amendments.** The 2007 amendment, in (a)(4), deleted "of the county where the marriage is solemnized" following "Any justice of the peace" and substituted "two (2)" for "three (3)."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.



### 9-11-214. Recordation of credentials of clerical character.

(a) No minister of the gospel or priest of any religious sect or denomination shall be authorized to solemnize the rites of matrimony in this state until the minister or priest has caused to be recorded his or her license or credentials of his or her clerical character in the office of the county clerk of some county in this state. The minister or priest must also have obtained from the clerk a certificate, under his or her hand and seal, that the credentials are duly recorded in his or her office.

(b) It shall be the duty of a minister of the gospel or priest to add to the certificate of marriage required by law a statement setting forth the county where and the time when his or her license or credentials were so recorded.

(c) Any minister of the gospel, priest of any religious sect or denomination, or any person purporting to be such, who shall solemnize the rites of matrimony contrary to the provisions of this section, shall be deemed guilty of a misdemeanor. On conviction he or she shall be fined in any sum not less than one hundred dollars (\$100).

(d)(1) It shall be the duty of the clerk and recorder in each county, seasonably to record, in a well-bound book to be kept for that purpose, all licenses or credentials of clerical character of the persons who deposit the licenses or credentials of clerical character with him or her for record.

(2) Any clerk failing to comply with the provisions of this subsection shall, on motion of the party aggrieved, giving the clerk ten (10) days' notice in writing of the motion, be fined any sum not exceeding one hundred dollars (\$100).

**History.** Rev. Stat., ch. 94, §§ 11, 22, 23; Acts 1843, §§ 2, 3, p. 55; 1873, No. 2, §§ 2, 3, p. 2; C. & M. Dig., §§ 7047, 7049, 7053, 7054; Pope's Dig., §§ 9027, 9029, 9033, 9034; Acts 1947, No. 93, § 1; A.S.A. 1947, §§ 55-218 — 55-221.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

**Cross References.** Acts validating recordation of credentials of clerical character, § 9-11-703.

County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.

## CASE NOTES

### ANALYSIS

Construction.

Revocation of Credentials.

### Construction.

The statutes regulating and prescribing the manner and form in which marriages may be solemnized in this state are mandatory and not directory. *Spicer v. Spicer*, 239 Ark. 1013, 397 S.W.2d 129 (1965).

### Revocation of Credentials.

In a suit to enjoin a church organization and the county clerk from attempting to cancel licenses and credentials filed according to this section, civil courts will not assume jurisdiction of a dispute involving church doctrine or discipline unless property rights are involved. *Kinder v. Webb*, 239 Ark. 1101, 396 S.W.2d 823 (1965).

### 9-11-215. Marriage ceremony.

(a) When marriages are solemnized by a minister of the gospel or priest, the ceremony shall be according to the forms and customs of the church or society to which he or she belongs. When solemnized by a civil officer, the form observed shall be the one the officer deems most appropriate.

(b) It shall be lawful for religious societies who reject formal ceremonies to join together in marriage persons who are members of the society according to the forms, customs, or rites of the society to which they belong, with the exception that the requirements set forth in the Covenant Marriage Act of 2001, § 9-11-801 et seq., shall be complied with if the parties enter into a covenant marriage.

**History.** Rev. Stat., ch. 94, §§ 12, 13; C. & M. Dig., §§ 7050, 7051; Pope's Dig., §§ 9030, 9031; A.S.A. 1947, §§ 55-222, 55-223; Acts 2001, No. 1486, § 3.

**Cross References.** Covenant Marriage Act, § 9-11-801 et seq.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

### CASE NOTES

#### Construction.

The statutes regulating and prescribing the manner and form in which marriages

may be solemnized in this state are mandatory and not directory. *Spicer v. Spicer*, 239 Ark. 1013, 397 S.W.2d 129 (1965).

### 9-11-216. Solemnization contrary to law — Penalty.

(a) Any person who presumes to solemnize marriage in this state contrary to the provisions of this act shall be adjudged guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b) The fine imposed by subsection (a) of this section shall be paid when collected into the general fund of the county in which the offense was committed.

**History.** Acts 1875, No. 127, § 8 (last part), p. 260; C. & M. Dig., § 7066; Pope's Dig., § 9048; A.S.A. 1947, § 55-217; Acts 1999, No. 1540, § 3.

**Meaning of "this act".** See note to § 9-11-204.

## CASE NOTES

## ANALYSIS

Construction.  
Notary Public.

**Construction.**

The statutes regulating and prescribing the manner and form in which marriages may be solemnized in this state are man-

datory and not directory. *Spicer v. Spicer*, 239 Ark. 1013, 397 S.W.2d 129 (1965).

**Notary Public.**

A notary public has no authority to solemnize a marriage, and it is immaterial that he told the parties he could not marry them. *Pearce v. State*, 97 Ark. 5, 132 S.W. 986 (1910).

### 9-11-217. Failure to sign and return license at time of marriage — Penalty.

(a) Any person who fails to officially sign and return any license to the parties at the time of the marriage shall be adjudged guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b) The fine imposed by subsection (a) of this section shall be paid when collected into the general fund of the county in which the offense was committed.

**History.** Acts 1875, No. 127, § 8 (last part), p. 260; C. & M. Dig., § 7066; Pope's Dig., § 9048; A.S.A. 1947, § 55-217; Acts 1999, No. 1540, § 4.

### 9-11-218. Return of executed license to clerk — Effect on bond.

(a) Any person obtaining a license under the provisions of this act shall be required to return the license to the office of the clerk of the county court within sixty (60) days from the date of the license.

(b)(1) If the license is duly executed and officially signed by some person authorized by law to solemnize marriage in this state, the bond required by § 9-11-210 shall be deemed null and void.

(2) Otherwise, it shall remain in full force and effect.

**History.** Acts 1875, No. 127, § 6, p. 260; C. & M. Dig., § 7063; Pope's Dig., § 9045; A.S.A. 1947, § 55-224.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

**Meaning of "this act".** See note to § 9-11-204.

**Cross References.** County offices defined, § 14-14-603.

Distribution powers of county governments, § 14-14-502.



## CASE NOTES

## ANALYSIS

Construction.  
Marriage Upheld.

**Construction.**

Failure to comply with Arkansas's licensing statutes, as distinguished from the solemnization statutes, does not void an otherwise valid marriage. *Fryar v. Roberts*, 346 Ark. 432, 57 S.W.3d 727 (2001).

**Marriage Upheld.**

As a failure to do a ministerial act, i.e., to return a marriage license to the county clerk within 60 days of its issuance, could not render a marriage void, the parties had solemnized their marriage by a wedding ceremony, and the minister signed the marriage license, the trial court erred in ruling on summary judgment that the parties were not married. *Fryar v. Roberts*, 346 Ark. 432, 57 S.W.3d 727 (2001).

**9-11-219. False return or record — Penalty.**

If any person authorized to solemnize any marriage in this state shall willfully make a false return of any marriage or pretended marriage to the clerk and recorder, or if the clerk and recorder shall willfully make a false record of any return of a marriage license made to him or her, the offender shall be deemed guilty of a misdemeanor and on conviction shall be fined in any sum not less than one hundred dollars (\$100).

**History.** Rev. Stat., ch. 94, § 25; C. & M. Dig., § 7068; Pope's Dig., § 9050; A.S.A. 1947, § 55-225.

**9-11-220. Duty of clerk on return of license — Issuance of certificate.**

(a) Upon the return of any license officially signed as having been executed and that the parties therein named have been duly and according to law joined in marriage, the clerk issuing the license shall make a record thereof in the marriage record in his or her office.

(b) The clerk shall immediately make out a certificate of the record, giving the names, date, book, and page, together with the name of the county and state, and attach the certificate to the license and return the license to the party presenting it.

(c) The certificate shall be signed officially by the clerk and sealed with the county seal.

(d) The circuit clerks in counties having two (2) judicial districts shall keep a record at the county site of each district in which marriage licenses shall be recorded.

(e)(1) If a license has been returned and recorded by the clerk that contains clerical or scrivener's errors, the licensee may submit proof of the error to the circuit court in an ex parte proceeding.

(2) The court, upon a finding of error, shall order the county clerk to correct the errors on the license.

(3) The licensee shall not be charged a fee for filing a request to correct clerical or scrivener's errors.

(f) On the face of the certificate shall appear the certification to the fact of marriage, including, if applicable, a designation that the parties

entered into a covenant marriage signed by the parties to the marriage and the witnesses, and the signature and title of the officiant.

**History.** Acts 1875, No. 127, § 9, p. 260; 1901, No. 123, § 2, p. 194; C. & M. Dig., §§ 7059, 7067; Pope's Dig., §§ 9041, 9049; A.S.A. 1947, §§ 55-226, 55-227; Acts 2001, No. 751, § 1; 2001, No. 1486, § 4.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

**Cross References.** County offices defined, § 14-14-603.

Covenant Marriage Act, § 9-11-801 et seq.

Distribution powers of county governments, § 14-14-502.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

### 9-11-221. Certified copies of record as evidence.

The books of marriages and clerical credentials to be kept by the respective clerks and recorders and copies duly certified by the clerks and recorders shall be evidence in all the courts in this state.

**History.** Rev. Stat., ch. 94, § 24; C. & M. Dig., § 7055; Pope's Dig., § 9035; A.S.A. 1947, § 55-230.

## RESEARCH REFERENCES

**Ark. L. Rev.** The Best Evidence Rule — A Rule Requiring the Production of a Writing to Prove the Writing's Contents, 14 Ark. L. Rev. 153.

Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

## CASE NOTES

### Rebuttal.

The evidence of marriage may be rebutted by proving that any circumstances

rendered indispensably necessary by law to a valid marriage were wanting. *Goset v. Goset*, 112 Ark. 47, 164 S.W. 759 (1914).

## SUBCHAPTER 3 — MARRIAGE CONTRACTS GENERALLY

### SECTION.

9-11-301. Execution of contract.

9-11-302. Acknowledgment or proof.

9-11-303. Recordation — Effect.

### SECTION.

9-11-304. Effect of unrecorded contract.

9-11-305. Contract or copy as evidence — Conclusiveness.

**Publisher's Notes.** This subchapter was probably superseded by Acts 1981, No. 548 (repealed), which was formerly codified as subchapter 4 of this chapter, as

to antenuptial agreements made after July 1, 1981. This subchapter, however, would continue to apply to antenuptial agreements made prior to July 1, 1981.

Acts 1981, No. 548 was repealed and replaced by Acts 1987, No. 715, which now probably supersedes this subchapter and applies to premarital agreements executed on or after July 20, 1987.

**Cross References.** Promises made in consideration of marriage must be written, § 4-59-101.

### RESEARCH REFERENCES

**A.L.R.** Enforceability of agreement requiring spouse's cooperation in obtaining religious bill of divorce. 29 A.L.R.4th 746.

Parties' behavior during marriage as regarding contractual rights. 56 A.L.R.4th 998.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 73.

**Am. Jur.** 52 Am. Jur. 2d, Marriage, §§ 4-8 and § 98 et seq.

**C.J.S.** 41 C.J.S., Husb. & Wife, § 60 et seq.

### CASE NOTES

#### **Acknowledgment and Recordation.**

Antenuptial contract neither recorded nor acknowledged was not invalid as between the parties and their privies and could be pleaded in bar of wife's claim of

homestead, dower and statutory allowances. *Burnes v. Burnes*, 203 Ark. 334, 157 S.W.2d 24 (1942).

**Cited:** *Galbreath, Stewart & Co. v. Cook*, 30 Ark. 417 (1875).

### 9-11-301. Execution of contract.

All marriage contracts whereby any estate, real or personal, is intended to be secured or conveyed to any person, or whereby the estate may be affected in law or equity, shall be in writing acknowledged by each of the contracting parties or proved by one (1) or more subscribing witnesses.

**History.** Rev. Stat., ch. 95, § 1; C. & M. Dig., § 7028; Pope's Dig., § 9008; A.S.A. 1947, § 55-301.

### CASE NOTES

#### ANALYSIS

Burden of Proof.

Evidence.

Knowledge.

Partial Performance of Parol Agreement.

#### **Burden of Proof.**

Administrator of deceased husband's estate pleading antenuptial contract in bar to widow's claim of homestead, dower and statutory allowances had burden to prove that the contract had been knowingly entered into. *Burnes v. Burnes*, 203 Ark. 334, 157 S.W.2d 24 (1942).

#### **Evidence.**

Under this section, a postnuptial marriage settlement must be in writing and oral statements to the contrary fell short of establishing a binding property settlement. *Rush v. Smith*, 239 Ark. 874, 394 S.W.2d 613 (1965).

#### **Knowledge.**

Antenuptial contract signed by woman, without knowledge of its provisions, was so unjust and unequitable as not to bar widow's claim. *Burnes v. Burnes*, 203 Ark. 334, 157 S.W.2d 24 (1942).

Evidence sufficient to prove antenuptial



agreement was knowingly entered into by the wife without any fraud or misunderstanding. *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

Woman not permitted to excuse her allegedly unknowing entry into an antenuptial agreement by saying she was "in love." *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

### **Partial Performance of Parol Agreement.**

A parol antenuptial agreement is not void but merely unenforceable; part performance subsequently acknowledged in writing rendered it enforceable. *Sims v. Roberts*, 188 Ark. 1030, 68 S.W.2d 1001 (1934).

## **9-11-302. Acknowledgment or proof.**

Marriage contracts shall be acknowledged or proven before a court of record, before some judge or clerk of a court of record, or before any former judge of a court of record who served at least four (4) years, of the state in which the contract is made and executed, which acknowledgment or proof shall be taken and certified in the same manner as deeds of conveyance for lands are or shall be required by law to be acknowledged or proven.

**History.** Rev. Stat., ch. 95, § 2; C. & M. Dig., § 7029; Pope's Dig., § 9009; Acts 1983, No. 850, § 2; A.S.A. 1947, § 55-302.

### **CASE NOTES**

**Cited:** *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

## **9-11-303. Recordation — Effect.**

(a) Every marriage contract whereby any real estate is conveyed or secured shall be recorded with the certificate of proof or acknowledgment in the office of the clerk and recorder of every county in which any estate intended to be affected or conveyed shall be situated.

(b) When a marriage contract is deposited with the recorder of any county for record, it shall be deemed full notice to all persons of the contents thereof, as far as relates to real estate affected thereby in the county where it is deposited.

**History.** Rev. Stat., ch. 95, §§ 3, 4; C. & M. Dig., §§ 7030, 7031; Pope's Dig., §§ 9010, 9011; A.S.A. 1947, §§ 55-303, 55-304.

### **CASE NOTES**

**Cited:** *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

## **9-11-304. Effect of unrecorded contract.**

No marriage contract shall be valid or affect property, except between the parties thereto and those who have actual notice thereof, until it

shall be deposited for record with the clerk and recorder of the county where the real estate is situated.

**History.** Rev. Stat., ch. 95, § 5; C. & M. Dig., § 7032; Pope's Dig., § 9012; A.S.A. 1947, § 55-305.

### CASE NOTES

#### **Validity Between Parties.**

Failure to record acknowledged antenuptial agreement did not affect its validity

as between the parties and their privies. *Davis v. Davis*, 196 Ark. 57, 116 S.W.2d 607 (1938).

### **9-11-305. Contract or copy as evidence — Conclusiveness.**

(a) Marriage contracts duly proved or acknowledged, certified, or recorded shall be received as evidence in any court of record of this state, without further proof of their execution.

(b) When it shall appear to a court that any marriage contract duly acknowledged or proved and recorded is lost or is not in the power of the party wishing to use it, a copy duly certified under the hand and seal of the clerk and recorder may be received in evidence.

(c) Neither the certificate of acknowledgment nor probate of any marriage contract, nor the record or transcript thereof, shall be conclusive, but may be rebutted.

**History.** Rev. Stat., ch. 95, §§ 6-8; C. & M. Dig., §§ 7033-7035; Pope's Dig., §§ 9013-9015; A.S.A. 1947, §§ 55-306 — 55-308.

### RESEARCH REFERENCES

**Ark. L. Rev.** Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

## SUBCHAPTER 4 — ARKANSAS PREMARITAL AGREEMENT ACT

#### SECTION.

- 9-11-401. Definitions.
- 9-11-402. Formalities.
- 9-11-403. Content.
- 9-11-404. Effect of marriage.
- 9-11-405. Amendment or revocation.
- 9-11-406. Enforcement.
- 9-11-407. Enforcement — Void marriage.

#### SECTION.

- 9-11-408. Limitations of actions.
- 9-11-409. Application and construction.
- 9-11-410. Short title.
- 9-11-411. Severability.
- 9-11-412. Time of taking effect.
- 9-11-413. Repeal.

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**Publisher's Notes.** Former subchapter 4, concerning antenuptial contracts or settlements, was repealed by Acts 1987, No. 715, § 13. The former subchapter was

derived from the following sources:

9-11-401. Acts 1981, No. 548, § 6; A.S.A. 1947, § 55-314.

9-11-402. Acts 1981, No. 548, § 1; A.S.A. 1947, § 55-309.

9-11-403. Acts 1981, No. 548, § 2; A.S.A. 1947, § 55-310.

9-11-404. Acts 1981, No. 548, § 1; A.S.A. 1947, § 55-309.

9-11-405. Acts 1981, No. 548, § 3; A.S.A. 1947, § 55-311.

9-11-406. Acts 1981, No. 548, § 4; A.S.A. 1947, § 55-312.

9-11-407. Acts 1981, No. 548, § 5; A.S.A. 1947, § 55-313.

## RESEARCH REFERENCES

**A.L.R.** Enforceability of agreement requiring spouse's cooperation in obtaining religious bill of divorce. 29 A.L.R.4th 746.

Modern status of views as to validity of premarital agreements contemplating divorce or separation. 53 A.L.R.4th 22.

Enforceability of premarital agreements governing support or property rights upon divorce or separation as affected by circumstances surrounding execution. 53 A.L.R.4th 85.

Enforceability of premarital agreements governing support or property rights upon divorce or separation as affected by fairness or adequacy of those terms. 53 A.L.R.4th 161.

Parties' behavior during marriage as regarding contractual rights. 56 A.L.R.4th 998.

Failure to disclose extent or value of property owned as ground for avoiding premarital contract. 3 A.L.R.5th 394.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 73.

**Am. Jur.** 41 Am. Jur. 2d, *Husb. & Wife*, § 277 et seq.

**C.J.S.** 41 C.J.S., *Husb. & W.*, § 60 et seq.

**U. Ark. Little Rock L.J.** Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

## 9-11-401. Definitions.

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

**History.** Acts 1987, No. 715, § 1.

## CASE NOTES

### In General.

Parties contemplating marriage may, by agreement, fix the rights of each in the property of the other differently than established by law; such agreements must be made in contemplation of the marriage lasting until death, rather than in contemplation of divorce. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

An agreement that is not solely intended to be operative upon divorce is not void merely because it mentions or is operative upon divorce, among other contingencies. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).



**9-11-402. Formalities.**

A premarital agreement must be in writing and signed and acknowledged by both parties. It is enforceable without consideration.

**History.** Acts 1987, No. 715, § 2.

**9-11-403. Content.**

(a) Parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

**History.** Acts 1987, No. 715, § 3.

**9-11-404. Effect of marriage.**

A premarital agreement becomes effective upon marriage.

**History.** Acts 1987, No. 715, § 4.

**9-11-405. Amendment or revocation.**

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

**History.** Acts 1987, No. 715, § 5.

**9-11-406. Enforcement.**

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive after consulting with legal counsel, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one (1) party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

**History.** Acts 1987, No. 715, § 6.

## CASE NOTES

### ANALYSIS

Applicability.

Classification of Property.

Failure to Read Agreement.

Present Value.

Presumption of Concealment.

### Applicability.

This section does not apply to a postnuptial agreement and, thus, such an agreement was upheld as valid under contract elements where both parties waived and released any rights as a surviving spouse to elect to take against the other's will or to have any interest in the property of the deceased spouse. *Stewart v. Combs*, 368 Ark. 121, 243 S.W.3d 294 (2006).

### Classification of Property.

Where the agreement clearly stated that property acquired subsequent to the marriage shall be owned jointly, with each party entitled to one-half ownership in any such property, the fact that the husband bought property with his own money did not make that property his separate property. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

### Failure to Read Agreement.

Wife's failure to read the proposed agreement before she signed it did not excuse her from its consequences. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

### Present Value.

The chancellor's finding of the total present value of all property acquired subsequent to the marriage was clearly against the preponderance of the evidence, where he failed to consider all property acquired subsequent to the marriage. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

### Presumption of Concealment.

Where the provisions for the wife are disproportionate to the means of the husband, a presumption arises that there has been a designed concealment, and such presumption places a burden on the husband to show by a preponderance of the evidence that the wife had knowledge of the character and extent of his assets, or ought to have had such knowledge at the time the agreement was signed. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

The presumption was overcome by proof that the husband made available to the wife a complete list of his assets, the value thereof, and his estimated net worth; there was evidence that, before the mar-

riage, she had been on his farm; and she admitted that no pressure had been applied to force her to sign the agreement. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

### **9-11-407. Enforcement — Void marriage.**

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

**History.** Acts 1987, No. 715, § 7.

### **9-11-408. Limitations of actions.**

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

**History.** Acts 1987, No. 715, § 8.

### **9-11-409. Application and construction.**

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

**History.** Acts 1987, No. 715, § 9.

**A.C.R.C. Notes.** The reference to “this act among states enacting it” refers to the Uniform Premarital Agreement Act.

### **9-11-410. Short title.**

This subchapter may be cited as the Arkansas Premarital Agreement Act.

**History.** Acts 1987, No. 715, § 10.

### **9-11-411. Severability.**

If any provision of this subchapter or its application to any person or circumstance be held invalid, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

**History.** Acts 1987, No. 715, § 11.



**9-11-412. Time of taking effect.**

This subchapter takes effect July 20, 1987, and applies to any premarital agreement executed on or after that date.

**History.** Acts 1987, No. 715, § 12.

**A.C.R.C. Notes.** As enacted, this section provided for an effective date of July 1, 1987. However, since the act contained no emergency clause, such effective date would be invalid under Arkansas case law (see *State ex rel. Arkansas Tax Com. v.*

*Moore*, 103 Ark. 48, 145 S.W. 199 (1912) and related cases). Consequently, the general effective date for 1987 legislation was substituted in this section by the Arkansas Code Revision Commission pursuant to its authority under § 1-2-303.

**9-11-413. Repeal.**

The following acts and parts of acts are repealed:

- (a) Acts 1981, No. 548.
- (b) All laws and parts of laws in conflict with this subchapter.

**History.** Acts 1987, No. 715, § 13.

**SUBCHAPTER 5 — RIGHTS AND PROPERTY OF MARRIED PERSONS****SECTION.**

- 9-11-501. Construction of this section and §§ 9-11-509 — 9-11-514.
- 9-11-502. Removal of disabilities of married women.
- 9-11-503. Rights generally.
- 9-11-504. Authority to make executory contracts — Power of attorney.
- 9-11-505. Control of separate real and personal property.
- 9-11-506. Spouses not liable for each other's antenuptial debts.
- 9-11-507. Separate property of one spouse not liable for other spouse's debts.
- 9-11-508. Contracts concerning separate property of one spouse not binding on other spouse.

**SECTION.**

- 9-11-509. Schedule of separate personal property — Filing — Effect.
- 9-11-510. Form of schedule.
- 9-11-511. Filing of schedule by person selling or giving property — Effect of recording conveyance or will.
- 9-11-512. Effect of failure to file schedule.
- 9-11-513. Control of one spouse's separate property by other spouse — Presumption of agency or trusteeship.
- 9-11-514. Settlements in equity.
- 9-11-515. Reformation of deeds.

**Cross References.** Deeds between husband and wife, § 18-12-401.

**Effective Dates.** Acts 1873, No. 126, § 12: effective on passage.

Acts 1893, No. 21, § 3: effective on passage.

Acts 1899, No. 5, § 2: effective on passage.

Acts 1915, No. 159, § 2: effective on passage.

Acts 1919, No. 66, § 2: effective on passage, relating back to passage of original act and its interpretation thereof. Approved Feb. 11, 1919.

## RESEARCH REFERENCES

**A.L.R.** Deed to persons described as husband and wife but not legally married. 9 A.L.R.4th 1189.

Prior institution of annulment proceedings or other attack on validity of one's marriage as barring or estopping one from entitlement to property rights as surviving spouse. 31 A.L.R.4th 1190.

Validity and effect of one spouse's conveyance to the other spouse of interest in property held as estate by entireties. 18 A.L.R.5th 230.

Property rights arising from relationship of couple cohabiting without marriage. 69 A.L.R.5th 219.

**Am. Jur.** 41 Am. Jur. 2d, *Husb. & Wife*, § 5 et seq.

**Ark. L. Rev.** Personal Property — Ownership of Wedding Gifts, 8 Ark. L. Rev. 184.

The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

Family Torts in Automobile Cases, 13 Ark. L. Rev. 299.

Torts and the Family — Areas of Liability, 14 Ark. L. Rev. 92.

Torts — Assault and Battery — Liability of One Who Aids and Abets Where Principal Assailant Not Liable, 15 Ark. L. Rev. 201.

Res Judicata — Privity Between Husband and Wife, 18 Ark. L. Rev. 103.

Note, Imputed Negligence Under the Arkansas Comparative Liability Statute, Exception: Stull, *Adm'x v. Ragsdale*, 35 Ark. L. Rev. 722.

Note, *Attwood v. Estate of Attwood: A Partial Abrogation of the Parental Immunity Doctrine*, 36 Ark. L. Rev. 451.

**C.J.S.** 41 C.J.S., *Husb. & Wife*, § 2 et seq.

**U. Ark. Little Rock L.J.** Note, Torts — Negligence — Contributory Negligence of One Parent Is Imputed to the Other to Diminish the Latter's Recovery for the Death of a Minor Child. Stull v. Ragsdale, 273 Ark. 277, 620 S.W.2d 264, 26 A.L.R.4th 385 (1981). 5 U. Ark. Little Rock L.J. 289.

Harris, The Arkansas Marital Property Statute and the Arkansas Appellate Courts: Tiptoeing Together Through the Tulips, 7 U. Ark. Little Rock L.J. 1.

## 9-11-501. Construction of this section and §§ 9-11-509 — 9-11-514.

The rule that statutes in derogation of the common law shall be strictly construed shall have no application to this section and §§ 9-11-509 — 9-11-514.

**History.** Acts 1875 (Adj. Sess.), No. 91, § 6, p. 172; C. & M. Dig., § 5596; Pope's Dig., § 7246; Acts 1981, No. 873, § 11; A.S.A. 1947, § 55-414.

## CASE NOTES

**Cited:** *Medlock v. Fort Smith Serv. Fin. Corp.*, 304 Ark. 652, 803 S.W.2d 930 (1991).

## 9-11-502. Removal of disabilities of married women.

(a) Every married woman and every woman who may in the future become married shall have all rights to contract and be contracted with, to sue and be sued, and in law and equity shall enjoy all rights and be subjected to all the laws of this state, as though she were a femme sole.

(b) It is expressly declared to be the intention of this section to remove all statutory disabilities of married women as well as common law disabilities.

**History.** Acts 1915, No. 159, § 1; 1919, No. 66, § 1; C. & M. Dig., § 5577; Pope's Dig., § 7227; A.S.A. 1947, § 55-401.

## CASE NOTES

### ANALYSIS

Division of Property.  
Estates by Entirety.  
Liability of Husband.  
Minors.  
Partnership.  
Suits Between Husband and Wife.  
Suits by Married Women.

#### **Division of Property.**

A divorced wife's interest in property acquired by the joint labor of herself and her husband will be protected in equity, both at common law and under this section. *Williams v. Williams*, 186 Ark. 160, 52 S.W.2d 971 (1932).

#### **Estates by Entirety.**

This statute did not abolish estates by entirety. *Parrish v. Parrish*, 151 Ark. 161, 235 S.W. 792 (1921).

#### **Liability of Husband.**

A husband is not liable for torts committed by wife in husband's absence. *Bourland v. Baker*, 141 Ark. 280, 216 S.W. 707 (1919).

#### **Minors.**

This section was designed to emancipate married women from disabilities attendant upon their marital status but did not remove the disabilities of minority. *Schrum v. Bolding*, 260 Ark. 114, 539 S.W.2d 415 (1976), superseded by statute as stated in, *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982), superseded by statute as stated in, *Hamm v. Office of Child Support Enforcement*, 336 Ark. 391, 985 S.W.2d 742 (1999) (decision under prior law).

#### **Partnership.**

A husband and wife may form a partnership. *Quinn v. Stuckey*, 229 Ark. 956, 319 S.W.2d 839 (1959).

#### **Suits Between Husband and Wife.**

A married woman may sue her husband in tort. *Fitzpatrick v. Owens*, 124 Ark. 167, 186 S.W. 832 (1916); *Leach v. Leach*, 227 Ark. 599, 300 S.W.2d 15 (1957).

A husband or wife may sue the other and either is a competent witness in suits between them. *Comstock v. Comstock*, 146 Ark. 266, 225 S.W. 621 (1920).

Husband could maintain a suit against his wife for damages due to her negligence. *Leach v. Leach*, 227 Ark. 599, 300 S.W.2d 15 (1957).

#### **Suits by Married Women.**

Wife may sue for personal injuries sustained by her. *Texarkana & Ft. Smith Ry. v. Adcock*, 149 Ark. 110, 231 S.W. 866 (1921).

Although a husband is ordinarily liable only for the necessities of life furnished to his wife, medical expenses and drug bills she had incurred or might reasonably incur in the future were recoverable by injured wife. *Holmes v. Hollingsworth*, 234 Ark. 347, 352 S.W.2d 96 (1961).

Under this statute, a married woman could bring her own action for injuries received in an automobile collision alleged to have been caused by decedent's negligence and the statute of nonclaim was not tolled as to such action by the absence of her husband in military service. *Lopez v. Waldrum Estate*, 249 Ark. 558, 460 S.W.2d 61 (1970).

**Cited:** *Lopez v. Waldrum Estate*, 249 Ark. 558, 460 S.W.2d 61 (1970); *Medlock v. Fort Smith Serv. Fin. Corp.*, 304 Ark. 652, 803 S.W.2d 930 (1991).



### 9-11-503. Rights generally.

(a) A married person may bargain, sell, assign, and transfer his or her separate personal property, carry on any trade or business, and perform any labor or services on his or her sole and separate account.

(b) The earnings of any married person from the trade, business, labor, or services shall be his or her sole and separate property and may be used or invested in the person's own name.

(c) He or she may sue alone or be sued in the courts of this state on account of the property, business, or services.

**History.** Acts 1873, No. 126, § 3, p. 57231; Acts 1981, No. 873, § 1; A.S.A. 382; C. & M. Dig., § 5581; Pope's Dig., 1947, § 55-402.

### CASE NOTES

#### ANALYSIS

In General.

Conduct of Business.

Contracts.

Necessaries.

Partnership.

Suit Against Married Woman.

#### In General.

This section removed the common law disability of coverture, and repealed the saving clause in statute of limitations in a woman's favor. *Hershy v. Latham*, 42 Ark. 305 (1883); *Batte v. McCaa*, 44 Ark. 398 (1884); *McGaughey v. Brown*, 46 Ark. 25 (1885); *Garland County v. Gaines*, 47 Ark. 558, 2 S.W. 460 (1886).

#### Conduct of Business.

This section empowers a woman to become something more than a trader in the commercial sense. The primary significance of "business" is employment and includes farming. *Hickey v. Thompson*, 52 Ark. 234, 12 S.W. 475 (1889).

This section confers the right to conduct business in the way and by the means usually employed in carrying on business. *Cooper v. Burel*, 129 Ark. 261, 195 S.W. 356 (1917).

#### Contracts.

Husband and wife could not, by this section, contract between themselves. *Spurlock v. Spurlock*, 80 Ark. 37, 96 S.W. 753 (1906). (See however § 9-11-502.)

Obligations between husband and wife incurred before marriage were not extinguished by the marriage. *McKie v. McKie*, 116 Ark. 68, 172 S.W. 891 (1914).

Clearly, the law in Arkansas provides that a married person can contract in his or her own right; he or she can sue or be sued in his or her own right. *Medlock v. Fort Smith Serv. Fin. Corp.*, 304 Ark. 652, 803 S.W.2d 930 (1991).

#### Necessaries.

Sections 9-11-502 — 9-11-508 have not superseded the wife's necessities doctrine. *Davis v. Baxter County Regional Hosp.*, 313 Ark. 388, 855 S.W.2d 303 (1993).

#### Partnership.

Wife may form a partnership in trade with any one, except her husband, and as to her separate estate, will be bound by all the contracts of the firm and to the same extent as if she were not married. *Abbott v. Jackson*, 43 Ark. 212 (1884).

Under this section wife could not form a partnership with her husband. *Gilkerson-Sloss Comm'n Co. v. Salinger*, 56 Ark. 294, 19 S.W. 747 (1892). (See however § 9-11-502.)

#### Suit Against Married Woman.

The husband need not be joined in a suit against the wife. *Arkansas Stables v. Samstag*, 78 Ark. 517, 94 S.W. 699 (1906); *Alphin v. Wade*, 89 Ark. 354, 116 S.W. 667 (1909).

The burden of proof in an action seeking to enforce liability against a married woman is upon the plaintiff to show that the contract was one which she had the power to make. *Hardin v. Jessie*, 103 Ark. 246, 146 S.W. 499 (1912).

This section did not mean that in every instance a married woman must be sued

alone. *Williamson v. O'Dwyer & Ahern Co.*, 127 Ark. 530, 192 S.W. 899 (1917).

### 9-11-504. Authority to make executory contracts — Power of attorney.

It shall be lawful for married women to make executory contracts and to execute letters of attorney containing a power to convey real estate as agents or attorneys that shall have the same force and effect as those made by unmarried persons.

**History.** Acts 1895, No. 47, § 1, p. 58; Pope's Dig., § 7226; A.S.A. 1947, § 55-405.

**Publisher's Notes.** For former act au-

thorizing execution of deeds and other instruments of conveyance by married women through an agent, see Acts 1893, No. 21.

## CASE NOTES

### ANALYSIS

In General.  
Covenants of Warranty.  
Ratification.

#### In General.

This section did not enlarge the powers of a married woman other than to give validity to her executory contracts. *Sparks v. Moore*, 66 Ark. 437, 56 S.W. 1064 (1899).

### Covenants of Warranty.

Married women became liable on their contracts including covenants of warranty by the passage of this section. *Tucker v. Walker*, 246 Ark. 177, 437 S.W.2d 788 (1969).

### Ratification.

Evidence sufficient to prove woman ratified a contract. *Longino v. State*, 158 Ark. 162, 249 S.W. 557 (1923).

### 9-11-505. Control of separate real and personal property.

(a) The real and personal property that any married person now owns, or has had conveyed to him or her by any person in good faith and without prejudice to existing creditors, that is acquired as sole and separate property, that comes to him or her by gift, bequest, descent, grant, or conveyance from any person, that he or she has acquired by trade, business, labor, or services carried on or performed on his or her sole or separate account, that a married person in this state holds or owns at the time of the marriage, and the rents, issues, and proceeds of all such property shall, notwithstanding the marriage, be and remain his or her sole and separate property.

(b) The separate property may be used, collected, and invested by him or her, in his or her own name, and shall not be subject to the interference or control of his or her spouse nor shall it be liable for the spouse's debts, except as may have been contracted for the support of the spouse, or support of the children of the marriage by the spouse or his or her agent.

**History.** Acts 1873, No. 126, § 2, p. 382; C. & M. Dig., § 5580; Pope's Dig., § 7230; Acts 1981, No. 873, § 2; A.S.A. 1947, § 55-404.

**Cross References.** Property of femme covert, Ark. Const., Art. 9, § 7.

## CASE NOTES

## ANALYSIS

Construction with Other Law.  
 Conveyance.  
 Curtesy.  
 Liability for Debts.

**Construction with Other Law.**

Where decedent and his surviving spouse were married for only four years, the trial court did not clearly err in finding that the transfer-on-death (TOD) account was the sole and separate property of decedent's three children by a prior marriage as the named beneficiaries of the TOD account; the funds used to purchase the account were gained as the result of the sale of decedent's business, which he acquired before his marriage to the surviving spouse and continued to hold as his separate property during the course of the marriage, and the surviving spouse admittedly had no ownership interest in the business, nor was their commingling of any funds between the surviving spouse and the decedent once they were married. *Ginsburg v. Ginsburg*, 359 Ark. 226, 195 S.W.3d 898 (2004).

**Conveyance.**

A wife may convey her separate estate as a femme sole and even though conveyance is without acknowledgment it would be valid between the parties. *Johnson v. Graham Bros. Co.*, 98 Ark. 274, 135 S.W. 853 (1911).

**Curtesy.**

If a woman makes no disposal of her separate property and there is issue born alive of the marriage, at her death husband's right of curtesy attaches as at common law. *Neely v. Lancaster*, 47 Ark. 175, 1 S.W. 66 (1886). See also *Percy v. Cockrill*, 53- F. 872 (8th Cir. 1893); *McGuire v. Cook*, 98 Ark. 118, 135 S.W. 840 (1911).

Husband's right of curtesy is superior to claim of wife's creditors. *Hampton v. Cook*, 64 Ark. 353, 42 S.W. 535 (1897).

**Liability for Debts.**

The contracts of a married woman will not be enforced against her separate estate, unless they are made in reference thereto, or for her personal benefit. *Stillwell v. Adams*, 29 Ark. 346 (1874).

If the obligation is for improvement or preservation of the wife's estate, it will be implied that her property is liable for the debt. *Henry v. Blackburn*, 32 Ark. 445 (1877).

A married woman may contract for improvements upon her separate property and such a contract become the basis of a mechanic's lien for labor and materials. *Hoffman v. McFadden*, 56 Ark. 217, 19 S.W. 753 (1892).

Where husband was unable to pay on contract secured by a note executed by husband and wife to secure payment, the note was a valid obligation of the wife so far as it was for the benefit of her separate estate. *Crenshaw v. Collier*, 70 Ark. 5, 65 S.W. 709 (1901).

**9-11-506. Spouses not liable for each other's antenuptial debts.**

In all marriages solemnized after February 1, 1899, neither spouse shall be held to be liable for the antenuptial debts of the other, except by virtue of an express written contract.

**History.** Acts 1899, No. 5, § 1, p. 4; C. Acts 1981, No. 873, § 5; A.S.A. 1947, & M. Dig., § 5590; Pope's Dig., § 7240; § 55-408.

## CASE NOTES

**Cited:** *Fitzpatrick v. Owens*, 124 Ark. 167, 186 S.W. 832 (1916).



**9-11-507. Separate property of one spouse not liable for other spouse's debts.**

The property of any male or female, whether real or personal, and whether acquired before or after marriage in that person's own right, shall not be sold to pay the debts of a spouse contracted for or damages incurred by the spouse before marriage.

**History.** Rev. Stat., ch. 60, § 22; C. & M. Dig., § 5589; Pope's Dig., § 7239; Acts 1981, No. 873, § 4; A.S.A. 1947, § 55-406.

**CASE NOTES**

**Cited:** Allen v. Hanks, 136 U.S. 300, 10 S. Ct. 961, 34 L. Ed. 414 (1890).

**9-11-508. Contracts concerning separate property of one spouse not binding on other spouse.**

No bargain or contract made by any married person, in respect to his or her sole and separate property or any property that may come to him or her by descent, devise, bequest, purchase, or gift or grant of any person, and no bargain or contract entered into by any married person, in or about the carrying on of any trade or business, under any statute of the state, shall be binding upon his or her spouse or render his or her person or property in any way liable therefor.

**History.** Acts 1873, No. 126, § 4, p. 382; C. & M. Dig., § 5582; Pope's Dig., 1947, § 55-407.

**CASE NOTES****Divorce.**

This section does not control on the issue of marital debt associated with division of property in a divorce case. Hunt v. Hunt, 341 Ark. 173, 15 S.W.3d 334 (2000).

**Cited:** Mattar Bros. v. Wathen, 99 Ark. 329, 138 S.W. 455 (1911); Medlock v. Fort Smith Serv. Fin. Corp., 304 Ark. 652, 803 S.W.2d 930 (1991).

**9-11-509. Schedule of separate personal property — Filing — Effect.**

(a) A married person owning any separate personal property may make a schedule of the property and file it in the recorder's office of the county where he or she then lives.

(b) The schedule so filed, or a duly certified copy thereof, under the hand and seal of the recorder, shall be prima facie evidence, in all courts and places, that the property mentioned in the schedule, together with the issues and increases of the property, is, and was at the date of the making of the schedule, the separate property of the married person.

**History.** Acts 1875 (Adj. Sess.), No. 91, § 1, p. 172; C. & M. Dig., § 5591; Pope's Dig., § 7241; Acts 1981, No. 873, § 6; A.S.A. 1947, § 55-409.

**Cross References.** Scheduling separate personal property of married women, Ark. Const., Art. 9, § 8.

CASE NOTES

ANALYSIS

Purpose.  
Exchanged Property.  
Femme Sole.  
Money.

**Purpose.**

Failure to file a schedule will not enlarge the common law estate of a husband in his wife's property. The object of the statute was to increase the wife's rights and at the same time protect her husband's creditors. *Coquard v. Pearce*, 68 Ark. 93, 56 S.W. 641 (1900).

**Exchanged Property.**

Property for which scheduled property has been exchanged is not protected by

the schedule. *Berlin v. Cantrell*, 33 Ark. 611 (1878).

**Femme Sole.**

Schedules can only be filed by a married woman, and a schedule filed by a femme sole will not avail upon her subsequent marriage. *Berlin v. Cantrell*, 33 Ark. 611 (1878).

**Money.**

A married woman is not required to schedule her money. *German Bank v. Himstedt*, 42 Ark. 62 (1883).

**Cited:** *Taylor v. De Lapp*, 181 Ark. 1147, 24 S.W.2d 862 (1930).

9-11-510. Form of schedule.

That schedule of a married person's separate property may be in the following form:

"STATE OF ARKANSAS     )  
   )  
COUNTY OF ....     )

Be it known that I, ....., (Wife) (Husband) of ..... of the County and State aforesaid, own in my own right the property below described, which I hereby schedule as my separate property, to-wit:

(listing of property)

Witness my hand this .... day of ....., 20 .....

SIGNATURE"

**History.**  
Acts 1875 (Adj. Sess.), No. 91, § 7, p. 172;  
C. & M. Dig., § 5597; Pope's Dig., § 7247;

Acts 1981, No. 873, § 12; A.S.A. 1947,  
§ 55-415.

9-11-511. Filing of schedule by person selling or giving property  
— Effect of recording conveyance or will.

(a) Any persons who shall bona fide sell or give any property to a married person may schedule and record the sale or gift as the separate property of the married person, with the same and like effect as though the scheduling and recording had been done by the married person.

(b) Any conveyance or will of property to a married person, on being duly recorded, shall have all the effect of a schedule under §§ 9-11-501 and 9-11-509 — 9-11-514.

**History.** Acts 1875 (Adj. Sess.), No. 91, Dig., § 7242; Acts 1981, No. 873, § 7; § 2, p. 172; C. & M. Dig., § 5592; Pope's A.S.A. 1947, § 55-410.

### CASE NOTES

**Cited:** Wallace v. Watson, 140 Ark. 430, 215 S.W. 892 (1919).

#### 9-11-512. Effect of failure to file schedule.

The separate estate and property of a married person shall not be forfeited nor shall any rights and title thereto be prejudiced by a failure or neglect to file a schedule. However, in any suit, action, or proceeding relating to the property when the property has not been scheduled and recorded the burden of proof shall rest upon the married person to show the property is his or her separate property.

**History.** Acts 1875 (Adj. Sess.), No. 91, Dig., § 7243; Acts 1981, No. 873, § 8; § 3, p. 172; C. & M. Dig., § 5593; Pope's A.S.A. 1947, § 55-411.

#### 9-11-513. Control of one spouse's separate property by other spouse — Presumption of agency or trusteeship.

The fact that a married person permits his or her spouse to have the custody, control, and management of separate property shall not of itself be sufficient evidence that the married person has relinquished title to the property. However, the presumption shall be that the spouse is acting as the agent or trustee of the other. This presumption may be rebutted by any evidence establishing a sale or gift of the property to the other spouse.

**History.** Acts 1875 (Adj. Sess.), No. 91, Dig., § 7244; Acts 1981, No. 873, § 9; § 4, p. 172; C. & M. Dig., § 5594; Pope's A.S.A. 1947, § 55-412.

### CASE NOTES

#### ANALYSIS

Burden of Proof.  
Presumption.  
Rebutting Evidence.

#### Burden of Proof.

The burden is upon the husband to repel the presumption even though property paid for by the wife is taken in the husband's name. Gilbert v. Gilbert, 180 Ark. 596, 22 S.W.2d 32 (1929).

#### Presumption.

Evidence sufficient to support presumption that husband acted as the agent of the wife. Priddy v. Wood, 245 Ark. 209, 431 S.W.2d 744 (1968).

#### Rebutting Evidence.

This section does not require that the rebutting evidence should show a formal gift, it being sufficient if the proof shows that the wife's property was used by the husband in such manner as to preclude



the idea that she expected him to account to her as her agent or trustee. *Wyatt v. Scott*, 84 Ark. 355, 105 S.W. 871 (1907).

Evidence sufficient to rebut presumption that husband acted as wife's agent.

*Jones v. Seward*, 265 Ark. 225, 578 S.W.2d 16 (1979).

**Cited:** *Fletcher v. Dunn*, 188 Ark. 734, 67 S.W.2d 579 (1934).

### 9-11-514. Settlements in equity.

This section and §§ 9-11-501 and 9-11-509 — 9-11-513 shall not be construed to abridge the existing jurisdiction and powers of a court of equity to make a settlement upon a spouse out of his or her separate estate and property and otherwise protect his or her separate property rights. Such jurisdiction is extended to securing to each spouse his or her separate property as required by law.

**History.** Acts 1875 (Adj. Sess.), No. 91, § 5, p. 172; C. & M. Dig., § 5595; Pope's Dig., § 7245; Acts 1981, No. 873, § 10; A.S.A. 1947, § 55-413.

### 9-11-515. Reformation of deeds.

The circuit courts of this state shall reform all deeds or other instruments of conveyance of married women that have been executed and delivered to the purchaser wherein mistakes were or may be made by oversight in describing the property therein conveyed upon like conditions and to the same extent as if the married woman was a femme sole.

**History.** Acts 1893, No. 21, § 2, p. 38; C. & M. Dig., § 5578; Pope's Dig., § 7228; A.S.A. 1947, § 55-403.

## CASE NOTES

### ANALYSIS

Dower.  
Proof.

#### **Dower.**

This statute has no application to relinquishment of dower. *Adcox v. James*, 168 Ark. 842, 271 S.W. 980 (1925).

### **Proof.**

To reform a deed on ground of mistake the proof must be clear, unequivocal and decisive that the mistake was common to both parties and the deed as executed expressed the contract as understood by neither. *McGuigan v. Gaines*, 71 Ark. 614, 77 S.W. 52 (1903).

## SUBCHAPTER 6 — RIGHTS IN REAL ESTATE OF INSANE SPOUSE

### SECTION.

- 9-11-601. Obligations to support spouse unaffected by subchapter.
- 9-11-602. Sale of real estate free of dower or curtesy — Petition.
- 9-11-603. Sale of real estate free of dower or curtesy — Order and deposit.

### SECTION.

- 9-11-604. Setting apart dower or curtesy as life estate in certain lands.

**Effective Dates.** Acts 1905, No. 337, § 6: effective on passage.

Acts 1907, No. 393, § 4: effective on passage.

Acts 1923, No. 472, § 2: approved Mar. 20, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1981, No. 714, § 75: Mar. 25, 1981. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that existing law relating to such matters as homestead, dower, curtesy, statutory allowances pay-

able from a decedent's estate, and the right of a surviving spouse to take against the will of a decedent, do not in all circumstances provide for equal treatment between the sexes, that the constitutionality of such existing law has been drawn into question by decisions of the United States Supreme Court and the Arkansas Supreme Court, and that there is an urgent need to insure that the law provides equality in the property rights and interests of married persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

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### 9-11-601. Obligations to support spouse unaffected by subchapter.

Nothing in this subchapter shall be construed to release the plaintiff from any legal obligation the plaintiff may be under to support the defendant out of the plaintiff's estate, the same as if this subchapter had not been enacted.

**History.** Acts 1905, No. 337, § 4, p. 4450; Acts 1981, No. 714, § 12; A.S.A. 794; C. & M. Dig., § 3564; Pope's Dig., 1947, § 59-704.

### 9-11-602. Sale of real estate free of dower or curtesy — Petition.

(a)(1) Any person owning lands in this state and whose spouse is adjudged insane may apply by petition to the circuit court of the county where the lands are situated for leave to sell the real estate, or any part thereof, discharged and unencumbered of the rights of dower or curtesy of the spouse.

(2) The petition shall set forth the insanity of the spouse, the nature and duration thereof, the person with whom and the place at which the spouse may then be residing, the nature and object of the conveyance desired to be made, describing the real estate and giving the name of the person to whom the conveyance is intended to be made, and the consideration thereof, and that the intention of the conveyance is not to deprive the spouse of dower or curtesy, as the case may be, but to dispose of the real estate in the usual and ordinary course of business.

(b) On the filing of the petition, the court shall appoint some reliable and disinterested citizen not related to either of the parties, nor interested directly or indirectly in the real estate or any part thereof described in the petition as guardian ad litem for the defendant. The guardian ad litem shall forthwith cause the appearance of the defendant to be entered of record in the case from time to time and make such

pleadings in the case as may seem fit to him or her for the interest of his or her ward and be consistent with the practice of the court. All acts of the guardian ad litem shall be deemed valid and binding on the defendant.

**History.** Acts 1905, No. 337, § 1, p. § 4447; Acts 1981, No. 714, § 10; A.S.A. 794; C. & M. Dig., § 3561; Pope's Dig., 1947, § 59-701.

### **9-11-603. Sale of real estate free of dower or curtesy — Order and deposit.**

(a) Upon the hearing of the petition, if the court deems it to be in the best interest of the parties that the land be sold, it may make an order that the plaintiff may sell the land free and discharged and unencumbered of the right of dower or curtesy, as the case may be.

(b) In every such order, the court shall adjudge as part of the order that before the sale shall become effective, the petitioner or his or her grantee shall deposit in the registry of the court, in cash, one-third ( $\frac{1}{3}$ ) of the purchase price of the lands to be disposed of as provided in this section. In all such sales, the sale shall be reported to the circuit court and the sale approved thereby.

(c)(1) The deposit of one-third ( $\frac{1}{3}$ ) of the purchase price of the land shall be held in trust by the clerk of the court and loaned out by him or her under the order of the court from time to time at the highest obtainable rate of interest, upon security to be approved by the court or judge in vacation. The clerk shall be responsible therefor on his or her official bond.

(2) The interest on the money shall be paid over annually to the plaintiff. However, the court may make, upon application, of which the plaintiff shall be notified, and on reasonable showing, reasonable allowance out of the interest from time to time for the support of the defendant.

(d)(1) Should the insane defendant be survived by the plaintiff, the deposit shall be paid over to the plaintiff upon the plaintiff's application to the court. If the plaintiff survives the defendant but dies before an order of the court is actually made to pay the moneys over to the plaintiff, then the moneys shall descend to the plaintiff's heirs at law as realty and shall be paid over to the plaintiff's heirs or legal representatives according to law or the lawful order of the circuit court.

(2) In the event that the plaintiff is survived by the defendant, the interest accruing on the deposit shall be paid over to the defendant only during the defendant's natural life. At the defendant's death the deposit shall descend to the heirs at law of the plaintiff as realty and shall be paid over to the plaintiff's heirs or legal representatives according to law or the lawful order of the circuit court.

**History.** Acts 1905, No. 337, §§ 2-5, p. §§ 11-13; A.S.A. 1947, §§ 59-702 — 59-794; C. & M. Dig., §§ 3562-3565; Pope's 705.  
Dig., §§ 4448-4451; Acts 1981, No. 714, **A.C.R.C. Notes.** Ark. Const., Amend.



80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

### **9-11-604. Setting apart dower or curtesy as life estate in certain lands.**

(a)(1) Any person owning lands in this state whose spouse is adjudged permanently insane may apply by petition to the circuit court of the county where the lands or the greater part thereof are situated to have a life estate in a part of the lands set apart to the spouse in lieu of the spouse's inchoate right of dower or curtesy, as the case may be, in all of the lands and the remaining lands discharged and unencumbered of the dower or curtesy interest of the spouse.

(2) The petition shall set forth the insanity of the spouse, the nature and duration thereof, the person with whom and the place at which the spouse may then be residing, describing all the real estate of the plaintiff, and that it will be to the best interest of all parties.

(b) On the filing of the petition, the court shall appoint some reliable person, a citizen of the county, not related to either of the parties nor interested directly or indirectly in the real estate nor in any part thereof as guardian ad litem for the spouse. The guardian ad litem shall forthwith cause the appearance of the spouse to be entered of record in the case and make such pleadings in the case from time to time as may seem fit to him or her for the interest of his or her ward and be consistent with the practice of the court. All acts of the guardian ad litem shall be deemed valid and binding on his or her ward.

(c) The court on hearing the petition and being satisfied that it will be to the best interests of the parties to have the life estate in a part of the lands set apart to the spouse in lieu of dower or curtesy in the whole of the lands shall appoint three (3) persons as commissioners not interested in the lands nor in any part thereof who shall set apart the life estate in lieu of dower or curtesy, designating specifically the lands. They shall make their report to the court, which report shall be subject to the approval of the court.

(d) On approval of the report of the commissioners, the court shall make an order and decree divesting the dower or curtesy of the spouse out of the real estate of the plaintiff and in lieu thereof vesting in the spouse a life estate of the lands designated by the commissioners, and authorizing and empowering the plaintiff to sell the remainder of the lands or to mortgage and encumber the remainder of the lands free from any dower or curtesy rights of the spouse.

**History.** Acts 1907, No. 393, §§ 1-3, p. 985; C. & M. Dig., §§ 3566-3568; Acts 1923, No. 472, § 1; Pope's Dig., §§ 4452-

4454; Acts 1981, No. 714, §§ 14-16; A.S.A. 1947, §§ 59-706 — 59-708.

# SUBCHAPTER 7 — VALIDATING ACTS

## SECTION.

9-11-701. Persons acting for clerk.

9-11-702. Marriages performed by mayors.

9-11-703. Recordation of credentials of clerical character — Applicability of § 9-11-214.

## SECTION.

9-11-704. Marriages solemnized out of county.

9-11-705. Marriages solemnized by municipal court judges.

9-11-706. Marriage before entry of divorce decree.

**Effective Dates.** Acts 1843, p. 55, § 3: Apr. 1, 1843.

Acts 1873, No. 2, § 4: effective on passage, provided the penalty prescribed in the act should not be enforced within 60 days.

Acts 1885, No. 110, § 3: effective on passage.

Acts 1945, No. 6, § 3: approved Jan. 26, 1945. Emergency clause provided: "On account of the fact that persons other than county clerks or their deputies have issued marriage licenses and the legality of the marriages consummated thereunder has been called into question by reason of the fact that such licenses were not issued by the county clerk or his legally appointed deputy an emergency is found to exist and this act, being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1989 (3rd Ex. Sess.), No. 46, § 11: approved Nov. 14, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to validate otherwise legal marriages declared void by court decisions, to declare and preserve the legitimacy of the children born of such marriages, and to validate all property rights between the parties themselves and third persons; that it is in the best interest of the state that this act declaring such marriages take effect immediately. It is further determined that it is in the best interest of the state that the actions of alienation of affection and criminal conversation be abolished immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

## RESEARCH REFERENCES

**A.L.R.** Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

**Am. Jur.** 52 Am. Jur. 2d, Marriage, § 33 et seq.

**C.J.S.** 55 C.J.S., Marriage, § 28 et seq.

## 9-11-701. Persons acting for clerk.

(a) The acts and deeds of all persons acting for and in behalf of any county clerk in this state in the issuance of marriage licenses prior to January 26, 1945, whether the person was a duly and legally appointed deputy of the county clerk or not, are declared to be as legal and valid as if the licenses had been issued by the county clerk in person.

(b) All marriages solemnized in this state prior to January 26, 1945, pursuant to a marriage license issued by a person other than the county clerk of the county wherein the license was issued or by the legally appointed deputy of the county clerk are declared to be valid. All the

marriages shall be as binding and effectual as if the licenses had been issued by the county clerk of the county in person.

**History.** Acts 1945, No. 6, §§ 1, 2;  
A.S.A. 1947, §§ 55-231, 55-232.

### **9-11-702. Marriages performed by mayors.**

All marriage ceremonies performed by mayors in the State of Arkansas prior to June 12, 1947, are declared to be valid.

**History.** Acts 1947, No. 231, § 2; A.S.A.  
1947, § 55-216n.

### **9-11-703. Recordation of credentials of clerical character — Applicability of § 9-11-214.**

(a) Section 9-11-214(a) and (b) shall not apply to those ministers and priests who properly filed their credentials prior to February 18, 1947, according to the law as it existed at the time the credentials were filed.

(b) Any marriage solemnized by any regularly ordained minister or priest of any religious sect or denomination in this state prior to February 18, 1947, is declared legal and valid, whether or not the minister or priest caused his or her license or credentials to be recorded as provided by § 9-11-214(a) and (b).

**History.** Acts 1843, § 2, p. 55; 1873, No. 2, § 2, p. 2; C. & M. Dig., § 7047; Pope's Dig., § 9027; Acts 1947, No. 93, §§ 1, 2; A.S.A. 1947, §§ 55-218, 55-218n.  
**Publisher's Notes.** Previous acts which validated marriages conducted by ministers or priests who had failed to record their credentials were: Acts 1881, No. 93; Acts 1891, No. 37; Acts 1917, No. 253.

### **9-11-704. Marriages solemnized out of county.**

(a) All marriages between persons authorized to contract marriage and solemnized prior to March 31, 1885, by any justice of the peace, or any other person authorized by law to solemnize the rites of matrimony, of any county in any other county in this state, and the persons afterwards lived together as husband and wife, are declared to be legal and their children legitimate.

(b) All marriages so solemnized prior to March 31, 1885, by any justice of the peace, or any other person authorized by law to solemnize the rites of matrimony, of any county in any other county are legalized and made as binding between the married persons in every respect as if the rites of matrimony had been solemnized by a justice of the peace of the county where the marriage was solemnized.

**History.** Acts 1885, No. 110, §§ 1, 2, p. 182; C. & M. Dig., §§ 7070, 7071; Pope's Dig., §§ 9052, 9053; A.S.A. 1947, §§ 55-233, 55-234.



### 9-11-705. Marriages solemnized by municipal court judges.

All marriages solemnized by municipal court judges prior to July 20, 1987, are declared valid ab initio.

**History.** Acts 1987, No. 394, § 2.

### 9-11-706. Marriage before entry of divorce decree.

(a) It is the intent of this section to validate all marriages deemed void as a result of the decision of the Supreme Court in *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989), whether occurring prior to or subsequent to November 14, 1989.

(b)(1) All marriages heretofore or hereafter declared void because the parties had entered into an otherwise valid marriage after the rendition of a valid decree of divorce of either of the parties but before the entry for record of the decree are declared valid for all purposes.

(2) All children born to any marriage declared valid by this section are deemed to be the legitimate children of both parents for all purposes.

(3) All property rights, including, but not limited to, conveyances, inheritance, intestate succession, dower, curtesy, and all rights and duties between the parties themselves or third persons, are declared to be those of validly married persons.

(c) This section shall apply to all marriages occurring both prior and subsequent to November 14, 1989.

**History.** Acts 1989 (3rd Ex. Sess.), No. 46, §§ 1-5.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

## SUBCHAPTER 8 — COVENANT MARRIAGE ACT

### SECTION.

9-11-801. Title.

9-11-802. Definitions.

9-11-803. Covenant marriage.

9-11-804. Content of declaration of intent.

9-11-805. Form of affidavit.

9-11-806. Other applicable rules.

### SECTION.

9-11-807. Applicability to already married couples.

9-11-808. Divorce or separation.

9-11-809. Suit against spouse — Separation.

9-11-810. Effects of separation.

9-11-811. Informational pamphlet.

**Effective Dates.** Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical cor-

rects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003

will become effective on July 1, 2003; and that to avoid confusion this act must also be effective on July 1, 2003. Therefore, an emergency is declared to exist and this act

being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

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### 9-11-801. Title.

This subchapter shall be known and may be cited as the "Covenant Marriage Act of 2001".

**History.** Acts 2001, No. 1486, § 5.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

The Shackles of Covenant Marriage: Who Holds the Keys to Wedlock?, 25 U. Ark. Little Rock L. Rev. 261.

### 9-11-802. Definitions.

As used in this subchapter:

(1) "Authorized counseling" means marital counseling provided by:

(A)(i) A priest;

(ii) A minister;

(iii) A rabbi;

(iv) A clerk of the Religious Society of Friends; or

(v) Any clergy member of any religious sect or a designated representative;

(B) A marriage educator approved by the person who will perform the marriage ceremony; or

(C) As defined by § 17-27-102:

(i) A licensed professional counselor;

(ii) A licensed associate counselor;

(iii) A licensed marriage and family therapist;

(iv) A licensed clinical psychologist; or

(v) A licensed associate marriage and family therapist; and

(2) "Judicial separation" means a judicial proceeding pursuant to § 9-11-809 that results in a court determination that the parties to a covenant marriage live separate and apart.

**History.** Acts 2001, No. 1486, § 5; 2003, No. 1115, § 1; 2003, No. 1473, § 15.

### 9-11-803. Covenant marriage.

(a)(1) A covenant marriage is a marriage entered into by one (1) male and one (1) female who understand and agree that the marriage between them is a lifelong relationship.

(2) Parties to a covenant marriage will have received authorized counseling emphasizing the nature, purposes, and responsibilities of marriage.

(3) Only when there has been a complete and total breach of the marital covenant commitment may a party seek a declaration that the marriage is no longer legally recognized.

(b)(1) A man and a woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license as otherwise required under this chapter and executing a declaration of intent to contract a covenant marriage as provided in § 9-11-804.

(2) The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

**History.** Acts 2001, No. 1486, § 5.

### **9-11-804. Content of declaration of intent.**

(a) A declaration of intent to contract a covenant marriage shall contain all of the following:

(1) A recitation signed by both parties to the following effect:

#### **“A COVENANT MARRIAGE**

We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received authorized counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act of 2001, and we understand that a covenant marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Arkansas law on covenant marriages, and we promise to love, honor, and care for one another as husband and wife for the rest of our lives.”;

(2)(A) An affidavit by the parties that they have received authorized counseling that shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce.

(B) An attestation, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties received authorized counseling as to the nature and purpose of the marriage and the grounds for termination of the marriage and an acknowledgment that the counselor provided to the parties the informational pamphlet developed and promulgated by the Administrative Office of



the Courts under this subchapter that provides a full explanation of the terms and conditions of a covenant marriage; and

(3)(A) The signature of both parties witnessed by a notary; and

(B) If one (1) of the parties is a minor, or both are minors, the written consent or authorization of those persons required under this chapter to consent to or authorize the marriage of minors.

(b) The declaration shall consist of two (2) separate documents:

(1) The recitation as set out in subdivision (a)(1) of this section; and

(2) The affidavit with the attestation either included within or attached to the document.

(c) The recitation, affidavit, and attestation shall be filed as provided in § 9-11-803(b).

**History.** Acts 2001, No. 1486, § 5.

### 9-11-805. Form of affidavit.

The following is the suggested form of the affidavit that may be used by the parties, notary, and counselor:

“STATE OF ARKANSAS

COUNTY OF \_\_\_\_\_

BE IT KNOWN THAT on this.... day of ....., ....., before me the undersigned notary, personally came and appeared:

..... and .....

who after being duly sworn by me, a notary, deposed and stated that:

Affiants acknowledge that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a professional marriage counselor, which marriage counseling included:

A discussion of the seriousness of covenant marriage;

Communication of the fact that a covenant marriage is a commitment for life;

The obligation of a covenant marriage to take reasonable efforts to preserve the marriage if marital difficulties arise; and

That affiants both read the pamphlet entitled “Covenant Marriage Act” developed and promulgated by the Administrative Office of the Courts, which provides a full explanation of a covenant marriage, including the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce or divorce after a judgment of separation from bed or board.

.....

(Name of prospective spouse)

.....

(Name of prospective spouse)

.....

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY OF  
....., ....  
.....  
.....  
NOTARY PUBLIC

ATTESTATION

The undersigned attests that the affiants did receive counseling from me as to the nature and purpose of marriage, which included a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is for life, and the obligation of a covenant marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

.....  
Counselor”

**History.** Acts 2001, No. 1486, § 5.

**9-11-806. Other applicable rules.**

A covenant marriage shall be governed by all of the provisions of this title, except as otherwise specifically provided in this subchapter.

**History.** Acts 2001, No. 1486, § 5.

**9-11-807. Applicability to already married couples.**

(a) A married couple, upon submission of a copy of its marriage certificate, which need not be certified, may execute a declaration of intent to designate its marriage as a covenant marriage to be governed by this subchapter.

(b) This declaration of intent in the form and containing the contents required by subsection (c) of this section must be filed with the officer who issues marriage licenses in the county in which the couple is domiciled.

(c)(1) A declaration of intent to redesignate a marriage as a covenant marriage shall contain all of the following:

(A) A recitation by the parties as set out in § 9-11-804;

(B) An affidavit by the parties as set out in § 9-11-805 that they have discussed their intent to designate their marriage as a covenant marriage with an authorized counselor that included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce;

(C) An attestation signed by the counselor and attached to the parties’ affidavit acknowledging that the counselor provided to the parties the informational pamphlet developed and promulgated by the Administrative Office of the Courts under this subchapter that

provides a full explanation of the terms and conditions of a covenant marriage; and

(D) The signature of both parties witnessed by a notary.

(2)(A) The declaration shall contain two (2) separate documents:

(i) The recitation; and

(ii) The affidavit with the attestation either included within or attached to the document.

(B) The recitation, affidavit, and attestation shall be filed as provided in subsection (b) of this section.

**History.** Acts 2001, No. 1486, § 5.

This subchapter became effective August 13, 2001.

**A.C.R.C. Notes.** As enacted, subsection

(a) began "On or after the effective date of this subchapter."

### 9-11-808. Divorce or separation.

(a) Notwithstanding any other law to the contrary and subsequent to the parties' obtaining authorized counseling, a spouse to a covenant marriage may obtain a judgment of divorce only upon proof of any of the following:

(1) The other spouse has committed adultery;

(2) The other spouse has committed a felony or other infamous crime;

(3) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one (1) of the spouses;

(4) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years; or

(5)(A) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years from the date the judgment of judicial separation was signed; or

(B)(i) If there is a minor child or children of the marriage, the spouses have been living separate and apart continuously without reconciliation for a period of two (2) years and six (6) months from the date the judgment of judicial separation was signed.

(ii) However, if abuse of a child of the marriage or a child of one (1) of the spouses is the basis for which the judgment of judicial separation was obtained, then a judgment of divorce may be obtained if the spouses have been living separate and apart continuously without reconciliation for a period of one (1) year from the date the judgment of judicial separation was signed.

(b) Notwithstanding any other law to the contrary and subsequent to the parties' obtaining authorized counseling, a spouse to a covenant marriage may obtain a judgment of judicial separation only upon proof of any of the following:

(1) The other spouse has committed adultery;

(2) The other spouse has committed a felony and has been sentenced to death or imprisonment;

(3) The other spouse has physically or sexually abused the spouse seeking the legal separation or divorce or a child of one (1) of the spouses;



(4) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years; or

(5) The other spouse shall:

(A) Be addicted to habitual drunkenness for one (1) year;

(B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable.

**History.** Acts 2001, No. 1486, § 5.

#### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

#### 9-11-809. Suit against spouse — Separation.

(a) Unless judicially separated, spouses in a covenant marriage may not sue each other except for causes of action:

(1) Pertaining to contracts;

(2) For restitution of separate property;

(3) For judicial separation in covenant marriages;

(4) For divorce or for declaration of nullity of the marriage; and

(5) For causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart, although not judicially separated.

(b)(1) Any court that is competent to preside over divorce proceedings has jurisdiction of an action for judicial separation or divorce in a covenant marriage if:

(A) One (1) or both of the spouses are domiciled in this state and the ground for judicial separation or divorce in a covenant marriage was committed or occurred in this state or while the matrimonial domicile was in this state; or

(B) The ground therefor occurred elsewhere while either or both of the spouses were domiciled elsewhere, provided the person obtaining the judicial separation was domiciled in this state prior to the time the cause of action accrued and is domiciled in this state at the time the action is filed.

(2) An action for a judicial separation in a covenant marriage shall be brought in a county where either party is domiciled, or in the county of the last matrimonial domicile.

(3) The venue provided in this section may not be waived, and a judgment of separation rendered by a court of improper venue is an absolute nullity.

(c) Judgments on the pleadings and summary judgments shall not be granted in any action for judicial separation in a covenant marriage.

(d) In a proceeding for a judicial separation in a covenant marriage or thereafter, a court may award a spouse all incidental relief afforded in a proceeding for divorce, including, but not limited to, spousal

support, claims for contributions to education, child custody, visitation rights, child support, injunctive relief, and possession and use of a family residence or joint property.

**History.** Acts 2001, No. 1486, § 5.

### **9-11-810. Effects of separation.**

(a) Judicial separation in a covenant marriage does not dissolve the bond of matrimony since the separated husband and wife are not at liberty to marry again, but it puts an end to their conjugal cohabitation and to the common concerns that existed between them.

(b) Spouses who are judicially separated in a covenant marriage shall retain that status until either reconciliation or divorce.

**History.** Acts 2001, No. 1486, § 5.

### **9-11-811. Informational pamphlet.**

(a) The Administrative Office of the Courts shall promulgate an informational pamphlet, entitled "Covenant Marriage Act of 2001", which shall outline in sufficient detail the consequences of entering into a covenant marriage.

(b) The informational pamphlet shall be made available to any counselor who provides authorized counseling as provided for by this subchapter.

**History.** Acts 2001, No. 1486, § 5.

## **CHAPTER 12**

### **DIVORCE AND ANNULMENT**

#### **SUBCHAPTER**

1. GENERAL PROVISIONS.
2. ANNULMENT.
3. ACTIONS FOR DIVORCE OR ALIMONY.

#### **SUBCHAPTER 1 — GENERAL PROVISIONS**

##### **SECTION.**

9-12-101. Subsequent marriage before

dissolution of prior marriage prohibited.

### **9-12-101. Subsequent marriage before dissolution of prior marriage prohibited.**

No subsequent or second marriage shall be contracted by any person during the lifetime of any former husband or wife of the person unless the marriage with the former husband or wife has been dissolved for some one (1) of the causes set forth in the law concerning divorces by a court of competent authority.

**History.** Rev. Stat., ch. 94, § 6; C. & M. Dig., § 7042; Pope's Dig., § 9022; A.S.A. 1947, § 55-108.

## RESEARCH REFERENCES

**Ark. L. Rev.** The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

## CASE NOTES

### **Void Marriage.**

A marriage in violation of this section is void and no decree is necessary to avoid it. Goset v. Goset, 112 Ark. 47, 164 S.W. 759 (1914).

A bigamous marriage is void though one of the parties entered into it in good faith. Evatt v. Miller, 114 Ark. 84, 169 S.W. 817 (1914).

This section does not apply to void marriages and where wife was married prior

to the granting of divorce from former husband, court had jurisdiction to annul the marriage. Bramble v. Kemper, 227 Ark. 186, 297 S.W.2d 104 (1957).

A subsequent marriage before dissolution of a prior marriage is void. Acuna v. Sullivan, 765 F. Supp. 510 (E.D. Ark. 1991).

**Cited:** Smiley v. Smiley, 247 Ark. 933, 448 S.W.2d 642 (1970); Clark v. Clark, 19 Ark. App. 280, 719 S.W.2d 712 (1986).

## SUBCHAPTER 2 — ANNULMENT

### SECTION.

9-12-201. Grounds.

9-12-202. Proceedings for annulment to be in equity — Venue.

## RESEARCH REFERENCES

**A.L.R.** Prior institution of annulment proceedings or other attack on validity of one's marriage as barring or estopping one from entitlement to property rights as surviving spouse. 31 A.L.R.4th 1190.

Homosexuality, transvestitism and similar sexual practices as grounds for annulment of marriage. 68 A.L.R.4th 1069.

Power of incompetent spouse's guardian or representative to sue for granting or vacation of divorce or annulment of marriage, or to make compromise or settlement in such suit. 32 A.L.R.5th 673.

**Am. Jur.** 4 Am. Jur. 2d, Annulment of Marriage, § 1 et seq.

**Ark. L. Rev.** Domestic Relations — Annulment for Failure to Reveal Family Morals, 5 Ark. L. Rev. 442.

The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

The Cause of Action for Annulment of Marriage in Arkansas, 14 Ark. L. Rev. 85.

**C.J.S.** 7A C.J.S., Atty & C, § 370.

55 C.J.S., Marriage, § 48 et seq.

67A C.J.S., Parent & C, § 80.

90 C.J.S., Trusts, § 419.

95 C.J.S., Wills, § 582.



## 9-12-201. Grounds.

When either of the parties to a marriage is incapable from want of age or understanding of consenting to any marriage, or is incapable of entering into the marriage state due to physical causes, or when the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction.

**History.** Rev. Stat., ch. 94, § 5; C. & M. Dig., § 7041; Pope's Dig., § 9021; A.S.A. 1947, § 55-106.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Fam-ily Law, 13 U. Ark. Little Rock L.J. 369.

## CASE NOTES

### ANALYSIS

In General.  
Construction.  
Alimony.  
Attorney Fees.  
Burden of Proof.  
Conflict of Laws.  
Fraud.  
Minors.  
Nonresidents.  
Particular Grounds.  
Res Judicata.  
Time of Bringing Action.

### In General.

A marriage may be annulled only for causes set up by statute. *Phillips v. Phillips*, 182 Ark. 206, 31 S.W.2d 134 (1930).

### Construction.

The word "void" as used in this section is used in the sense that the marriage can be avoided. *Ragan v. Cox*, 210 Ark. 152, 194 S.W.2d 681 (1946).

The word "void" as used in this section means voidable. *Vance v. Hinch*, 222 Ark. 494, 261 S.W.2d 412 (1953).

The words "want of understanding" as used in this section are broad enough to include a person of unsound mind. *Vance v. Hinch*, 222 Ark. 494, 261 S.W.2d 412 (1953).

### Alimony.

Where a guardian sues to annul a marriage between an infant husband and in-

fant wife, wife cannot sue guardian or parent for alimony. *Erwin v. Erwin*, 120 Ark. 581, 180 S.W. 186 (1915).

### Attorney Fees.

Where evidence did not sustain annulment of marriage, defendant wife was entitled to award of fees for her attorney. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

### Burden of Proof.

Burden of proof is upon husband to establish fraud where he files an action to annul marriage on the ground of fraud. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

### Conflict of Laws.

The validity of a marriage must be determined by the law of the state where the marriage was contracted. *Feigenbaum v. Feigenbaum*, 210 Ark. 186, 194 S.W.2d 1012 (1946).

### Fraud.

In action to annul marriage on the ground of fraud the plaintiff must establish the fraud with the same amount of evidence, as is required in an action to set aside a deed or other written contract on the ground of fraud. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

Evidence did not justify annulment of marriage on the ground of false representation. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

**Minors.**

This section reaffirms public policy of the state to the effect that underage marriages, valid where contracted, are not void in Arkansas until nullified by a court of competent jurisdiction. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

The public policy of Arkansas against underage marriages is not such that a marriage, valid in the state where contracted, would be void in Arkansas. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

**Nonresidents.**

An Arkansas court has jurisdiction of a suit by a nonresident against a nonresident for the annulment of a marriage contracted between them in Arkansas. *Feigenbaum v. Feigenbaum*, 210 Ark. 186, 194 S.W.2d 1012 (1946).

**Particular Grounds.**

Marriage induced through fear of prosecution for having seduced a girl is not ground for annulling the marriage. *Kibler v. Kibler*, 180 Ark. 1152, 24 S.W.2d 867 (1930).

A marriage may be annulled when one of the parties is infected with syphilis. *Brown v. Brown*, 181 Ark. 528, 27 S.W.2d 85 (1930).

A woman who took part in a marriage ceremony at a time when by reason of intoxication she was incapable of consenting to marriage is entitled to have the

marriage annulled. *Bickley v. Carter*, 190 Ark. 501, 79 S.W.2d 436 (1935).

Marriage induced by misrepresentation as to paternity of child may be annulled on the ground of fraud. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

In son's action for an injunction prohibiting his deceased father's wife from receiving the father's pension benefits, the son could not challenge the validity of the father's marriage on appeal where the issue of whether the marriage should be set aside on the ground of undue influence was argued before, and decided by, the trial court. *Hooten v. Jensen*, 94 Ark. App. 130, 227 S.W.3d 431 (2006).

**Res Judicata.**

Decision in an annulment proceeding brought on the ground of false representation as to paternity of child is not res judicata in either a paternity or heirship action, as child is not a party privy to the annulment proceeding. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

**Time of Bringing Action.**

The marriage of an insane person is voidable only, and is subject to attack, only during the lifetime of both parties. *Vance v. Hinch*, 222 Ark. 494, 261 S.W.2d 412 (1953).

A state of marriage can only be dissolved during the lives of the parties to the marriage by annulment or by divorce. *Mabry v. Mabry*, 259 Ark. 622, 535 S.W.2d 824 (1976).

**9-12-202. Proceedings for annulment to be in equity — Venue.**

(a) The action shall be by equitable proceedings in the county where the complainant or complainants reside.

(b) The process may be directed in the first instance to any county in the state where the defendant may then reside or be found.

**History.** Pope's Dig., § 9021A, as added by Acts 1947, No. 168, § 1; A.S.A. 1947, § 55-107.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Acts of 1947. Changes in Venue Laws, 1 Ark. Law Rev. 209.

Conflict of Laws — Jurisdiction in Amendment, 22 Ark. L. Rev. 509.

## CASE NOTES

**Void Marriages.**

This section does not apply to void marriages and where wife was married prior to the granting of divorce from former husband, chancery court of the county

where the void marriage was performed had jurisdiction to annul the marriage. *Bramble v. Kemper*, 227 Ark. 186, 297 S.W.2d 104 (1957).

**SUBCHAPTER 3 — ACTIONS FOR DIVORCE OR ALIMONY**

## SECTION.

- 9-12-301. Grounds for divorce.
- 9-12-302. Equitable proceedings.
- 9-12-303. Venue — Service of process.
- 9-12-304. Pleadings — Interrogatories.
- 9-12-305. No judgment pro confesso.
- 9-12-306. Corroboration.
- 9-12-307. Matters that must be proved.
- 9-12-308. Effect of collusion, consent, or equal guilt of parties.
- 9-12-309. Maintenance and attorney's fees — Interest.
- 9-12-310. Waiting period before rendition of decree.
- 9-12-311. Legitimacy of children not affected.
- 9-12-312. Alimony — Child support — Bond — Method of payment.
- 9-12-313. Enforcement of separation agreements and decrees of court.

## SECTION.

- 9-12-314. Modification of allowance for alimony and maintenance — Child support.
- 9-12-315. Division of property.
- 9-12-316. Property settlements.
- 9-12-317. Dissolution of estates by the entirety or survivorship.
- 9-12-318. Restoration of name.
- 9-12-319. Nonresident defendants — Warning orders — Entry of decree.
- 9-12-320. Proceedings subsequent to decree — Change of venue.
- 9-12-321. Annulment of decree of divorce.
- 9-12-322. Divorcing parents to attend parenting class.
- 9-12-323. Joint credit card accounts.
- 9-12-324. Decree dissolving a covenant marriage.
- 9-12-325. Condonation abolished.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 9-12-301 through 9-12-322 may not apply to § 9-12-323, which was enacted subsequently.

**Cross References.** Decrees or dismissals to be registered with State Registrar of Vital Statistics, § 20-18-502.

**Effective Dates.** Acts 1891, No. 26, § 2: effective on passage.

Acts 1893, No. 102, § 2: effective on passage.

Acts 1931, No. 71, in part: approved Feb. 26, 1931. Emergency clause provided: "This law being necessary to create the uniformity in divorce laws in the states of the union and being necessary for the immediate preservation of the public health, peace and safety of the citizens of the state of Arkansas, an emergency is hereby declared and this law shall be in full force and effect from and after its passage."

Acts 1937, No. 167, § 2: effective on passage.

Acts 1939, No. 20, § 4: approved Jan. 27, 1939. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the State that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the State of Arkansas, it shall be in full force from and after its passage."

Acts 1943, No. 428, § 3: became law without Governor's signature, Apr. 1, 1943. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the State that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the State of Arkansas,



it shall be in full force from and after its passage."

Acts 1945, No. 274, § 2: approved Mar. 20, 1945. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety of the state of Arkansas, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 16, § 3: Jan. 31, 1947. Emergency clause provided: "It is hereby ascertained and declared by the 56th General Assembly of the state of Arkansas, that there is a lack of uniformity in the construction and application of section 4394 in cases where the divorce is granted to the husband, when by reason of law it should apply to all divorce actions, and that with the law in its present state, great confusion occurs in the restoration of the proper legal name to the wife in divorce decrees, and accordingly, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 159, § 2: approved Mar. 3, 1947. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the state that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the State of Arkansas, it shall be in full force from and after its passage."

Acts 1947, No. 340, § 3: Mar. 28, 1947. Emergency clause provided: "The general assembly of the state of Arkansas finds and declares that numerous injustices have been done because courts of equity within the state of Arkansas have lacked the power heretofore, upon dissolution of the marital status, to dissolve estates in property created by the marital status; and that, accordingly, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1953, No. 348, § 6: approved Mar. 28, 1953. Emergency clause provided: "Be-

cause it is ascertained and determined that it is vital to the continued foundation of the social structure of the state that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the state of Arkansas, it shall be in full force from and after its passage."

Acts 1957, No. 36: Feb. 11, 1957. Emergency clause provided: "Because it is ascertained and determined that confusion exists by reason of various conflicting decisions, particularly in *Squire v. Squire*, 186 Ark. 511, 54 S.W.2d 281, and *Cassen v. Cassen*, 211 Ark. 582, whereby many persons throughout the United States have been embarrassed and their marital status made obscure by reason of said conflicting decisions; and this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1959, No. 39, § 3: Feb. 13, 1959. Emergency clause provided: "Whereas, under existing law and procedure of the various chancery courts of this state, the authority of such judges to grant divorces in vacation in cases where the defendant is a nonresident of the state of Arkansas and against whom a warning order has been published, is doubtful, and should be clarified so as to prevent long delays, great inconvenience and hardship on resident plaintiffs in such cases, and the immediate passage of this act being necessary to correct said situation, Now, Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1963, No. 74, § 3: Feb. 21, 1963. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that it is vital to the social structure of this state that laws be established for the protection of domestic relations and that only by the immediate passage of this act may this be accomplished. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1963, No. 190, § 2: Mar. 8, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly the present law regarding the venue of divorce actions is not clear, that such lack of clarity results in undue hardship on the people of this State, and that this can be corrected only by the immediate passage of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in effect from the date of its passage and approval."

Acts 1969, No. 398, § 4: Apr. 11, 1969. Emergency clause provided: "It having been found by the General Assembly that in many cases plaintiffs, entitled to a divorce, are unable to prove by others matters for which a divorce should be granted, and unable to corroborate plaintiff's own testimony, and, therefore, unable to obtain a divorce which ought to be granted, to the harm of the plaintiff and of society in general, working an undue hardship on the parties, and so an emergency is declared to exist and this act being necessary to the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 297, § 3: Mar. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law regarding the venue for divorce actions is unduly harsh and restrictive and in many instances works a great hardship on the people of this State, and that it can be corrected only by the immediate passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in effect from the date of its passage and approval."

Acts 1975, No. 457, § 3: Mar. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law Chancery Courts rendering decrees of divorce are authorized to dissolve estates by the entirety or survivorship held by the parties to the divorce and to treat such parties as tenants in common, but that considerable confusion results in such cases when the Court does not specifically dissolve such estates in the decree; that it is in the best

interests of all parties concerned that the law on the subject be revised to provide that dissolution of estates by the entirety shall be automatic upon rendition of a final decree of divorce unless specifically provided otherwise in the decree; that this Act is designed to accomplish this purpose and to verify the law on the subject of estates by the entirety held by parties to a divorce proceeding, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect form and after its passage and approval."

Acts 1979, No. 705, § 7: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that in a dissenting opinion in the recent case of *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977), regarding Ark. Stat. Ann. Section 34-1214, a justice of the Arkansas Supreme Court said that 'The Arkansas law regarding property was enacted before the turn of the century and can no longer be defended historically or legally with any confidence', and that 'It clearly violates the Equal Protection Clauses of the Arkansas and the United States Constitutions'; that in the majority opinion in that same case the Court did not decide this issue, stating 'We will not decide constitutional issues unless their determination is essential to disposition of the case', and holding that this issue of property division at the time of a divorce action was not properly before it; that a decision holding that Ark. Stat. Ann. Section 34-1214 is unconstitutional would create chaos in all divorce actions then pending in Arkansas courts until such time as the Arkansas General Assembly could enact legislation to cover this subject; and that this Act is designed to correct and clarify the law on this subject. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Apr. 2, 1979.

Acts 1981, No. 69, § 2: Feb. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law relative to the division of marital property in divorce proceedings, if the court does not



divide such property equally between the parties, the court is required to state in writing the basis and reasons for not dividing the property equally; that the requirement that such basis and reasons be stated in writing in all such cases results in unreasonable delays in such proceedings and in inconvenience to the parties and to the courts; that this Act is designed to permit the court to orally state the basis and reasons for such division of property and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 267, § 3: Mar. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that in many cases in which any issue is contested the injured party, entitled to divorce, is unable to corroborate the injured party's own testimony as to grounds for divorce, and, therefore, is unable to obtain a divorce which ought to be granted. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 657, § 4: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court, in the case of Webb v. Webb, 262 Ark. 461, 557 S.W.2d 878 (1977), held that an award of alimony in fixed installments for a specified period of time is improper in that such award is in fact a gross sum instead of a continuing allowance; that this Act is designed to specifically authorize the award of alimony in fixed installments for a specified period of time in order that such payments will qualify as 'periodic payments' within the meaning of Section 71 (a) of the Internal Revenue Code; that this Act should be given effect immediately to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 714, § 75: Mar. 25, 1981. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that existing law relating to such matters as homestead, dower, curtesy, statutory allowances payable from a decedent's estate, and the right of a surviving spouse to take against the will of a decedent, do not in all circumstances provide for equal treatment between the sexes, that the constitutionality of such existing law has been drawn into question by decisions of the United States Supreme Court and the Arkansas Supreme Court, and that there is an urgent need to insure that the law provides equality in the property rights and interests of married persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1981, No. 798, § 4: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the federal income tax consequences of property divisions incident to divorce can make the after tax results drastically different from the value before taxes, of property divided between the spouses; that this Act is designed to provide for the consideration of such tax consequences; and that this Act should be given effect immediately to alert all parties in divorce proceedings to the potential impact of federal income taxes upon property divisions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 799, § 4: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present Arkansas law, there is no provision for a 'decree of legal separation'; that since there is no such provision, paragraph (3) of subsection (B) of Section 461 of the Civil Code as amended by Act 705 of 1979 actually has no application; that in a recent decision, the Arkansas Supreme Court carefully distinguished the proof requirements of absolute divorce and divorce from bed and board; that this Act is designed to clarify paragraph (3) of subsection (B) of Section



461 of the Civil Code, as amended, to specifically make the provisions thereof with respect to the division of property applicable not only in decrees of absolute divorce but also to decrees of divorce from bed and board; that this Act should be given effect immediately to render the provisions of present property division law compatible with the divorce law and cases. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 369, § 5: Mar. 8, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the authority of the court with respect to division of corporate stock and other securities in divorce proceedings is unclear and in many cases inadequate to permit the court to do equity in the division of property; that this Act is designed to permit the court to order that the securities be distributed to one party on the condition that one-half of the fair market value of such securities would be set aside and distributed to the other party; that this Act is necessary to clarify the law in this respect and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 989, § 6: Aug. 1, 1985.

Acts 1987, No. 599, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for clarification as to what fees are permitted to be charged for support collection throughout the state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 948, § 10: Mar. 27, 1989, except §§ 1, 2, and 5 effective Oct. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient

manner for all children of this state; that new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of this act to become effective October 1, 1989."

Acts 1991, No. 131, § 5: Feb. 12, 1991. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that it is vital to the social structure of the State that laws be established for the protection of domestic relations and that only by the immediate passage of this act may this be accomplished. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in effect from the date of its passage and approval."

Acts 1999, No. 1491, § 5: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that present law does not address the circumstances where subsequent to an Arkansas divorce both parties leave the county of jurisdiction resulting in custody concerns being under the jurisdiction of the chancery court of the county where neither party resides; that this act addresses that problem and allows for the transfer of the case to the county of residence of either party; and that this act should, therefore, go into effect as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective

tive on the date the last house overrides the veto."

## RESEARCH REFERENCES

**A.L.R.** License or professional degree of spouse as marital property for purposes of alimony, support or property settlement. 4 A.L.R.4th 1294.

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Vacating or setting aside divorce decree after remarriage of party. 17 A.L.R.4th 1153.

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Womack, 247 Ark. 1130, 449 S.W.2d 399 (1970); Hughes v. Hughes, 251 Ark. 63, 471 S.W.2d 355 (1971); Lovett v. Lovett, 254 Ark. 349, 493 S.W.2d 435 (1973); Dunn v. Dunn, 255 Ark. 764, 503 S.W.2d 168 (1973).

### 9-12-301. Grounds for divorce.

(a) A plaintiff who seeks to dissolve and set aside a covenant marriage shall state in his or her petition for divorce that he or she is seeking to dissolve a covenant marriage as authorized under the Covenant Marriage Act of 2001, § 9-11-801 et seq.

(b) The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

(1) When either party, at the time of the contract, was and still is impotent;

(2) When either party shall be convicted of a felony or other infamous crime;

(3) When either party shall:

(A) Be addicted to habitual drunkenness for one (1) year;

(B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable;

(4) When either party shall have committed adultery subsequent to the marriage;

(5) When husband and wife have lived separate and apart from each other for eighteen (18) continuous months without cohabitation, the court shall grant an absolute decree of divorce at the suit of either party, whether the separation was the voluntary act of one (1) party or by the mutual consent of both parties or due to the fault of either party or both parties;

(6)(A) In all cases in which a husband and wife have lived separate and apart for three (3) consecutive years without cohabitation by

reason of the incurable insanity of one (1) of them, the court shall grant a decree of absolute divorce upon the petition of the sane spouse if the proof shows that the insane spouse has been committed to an institution for the care and treatment of the insane for three (3) or more years prior to the filing of the suit, has been adjudged to be of unsound mind by a court of competent jurisdiction, and has not been discharged from such adjudication by the court and the proof of insanity is supported by the evidence of two (2) reputable physicians familiar with the mental condition of the spouse, one (1) of whom shall be a regularly practicing physician in the community wherein the spouse resided, and when the insane spouse has been confined in an institution for the care and treatment of the insane, that the proof in the case is supported by the evidence of the superintendent or one (1) of the physicians of the institution wherein the insane spouse has been confined.

(B)(i) In all decrees granted under this subdivision (b)(6), the court shall require the plaintiff to provide for the care and maintenance of the insane defendant so long as he or she may live.

(ii) The trial court will retain jurisdiction of the parties and the cause from term to term for the purpose of making such further orders as equity may require to enforce the provisions of the decree requiring the plaintiff to furnish funds for such care and maintenance.

(C)(i) Service of process upon an insane spouse shall be had by service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or upon a duly appointed guardian ad litem for the insane spouse, and when the insane spouse is confined in an institution for the care of the insane, upon the superintendent or physician in charge of the institution wherein the insane spouse is at the time confined.

(ii) However, when the insane spouse is not confined in an institution, service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or duly appointed guardian ad litem and thereafter personal service or constructive service on an insane defendant by publication of warning order for four (4) weeks shall be sufficient; and

(7) When either spouse legally obligated to support the other, and having the ability to provide the other with the common necessities of life, willfully fails to do so.

**History.** Civil Code, § 464; Acts 1873, No. 88, § 1[464], p. 213; C. & M. Dig., § 3500; Acts 1937, No. 167, § 1; Pope's Dig., § 4381; Acts 1939, No. 20, §§ 1, 2; 1943, No. 428, § 1; 1947, No. 159, § 1; 1953, No. 161, § 1; 1953, No. 348, § 2; 1963, No. 74, § 1; 1981, No. 633, § 5; 1985, No. 360, § 1; A.S.A. 1947, § 34-

1202; Acts 1991, No. 131, §§ 1, 2; 2005, No. 1890, § 1.

**A.C.R.C. Notes.** Acts 2005, No. 1890, § 3, provided: "This act shall apply to all petitions for divorce filed on or after the effective date of this act."

Acts 2005, No. 1890 became effective August 12, 2005.

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**Constitutionality.**

The act amending this statute so as to allow divorce after separation for three consecutive years was legally passed and is retroactive. *White v. White*, 196 Ark. 29, 116 S.W.2d 616 (1938).

The act amending subdivision (b)(5) of this section so as to require that the husband and wife shall have lived separate and apart for three consecutive years (now 18 months) without cohabitation was not beyond the power of the legislature to enact. *Jones v. Jones*, 199 Ark. 1000, 137 S.W.2d 238 (1940) (decision prior to the 1991 amendments).

Act abolishing recrimination as a defense against three-year separation is not unconstitutional as impinging upon equity jurisdiction, since the court of equity has the right to grant divorces on grounds and conditions prescribed by the legislature. *Young v. Young*, 207 Ark. 36, 178 S.W.2d 994 (1944).

**In General.**

Where it appears that conditions between a husband and wife have become unendurable without any hope of amelioration and a preponderance of the evidence shows that the husband by his conduct is chiefly responsible, the wife is entitled to a divorce from the bonds of matrimony. *Lemaster v. Lemaster*, 158 Ark. 206, 249 S.W. 589 (1923).

Divorce is a statutory matter and the legislature has a right to establish the grounds and conditions of divorce. *Young v. Young*, 207 Ark. 36, 178 S.W.2d 994 (1944).

**Adultery.**

Where a husband sues his wife upon the ground of adultery, the alleged adultery cannot be proved by evidence tending to show that she had a general reputation for unchastity. *Poe v. Poe*, 93 Ark. 426, 124 S.W. 1029 (1910).

The charge of adultery may be sufficiently proved by evidence leading to an inference of guilt. While the circumstances need not be such that an inference of guilt is the only possible conclusion that can be drawn therefrom, the facts must be such as to lead a just and reasonable man to the conclusion of guilt; and they are not sufficient if they merely justify a suspicion of guilt in the absence of other incriminating circumstances. *Leonard v. Leonard*, 101 Ark. 522, 142 S.W. 1133 (1912).

Charges of adultery in a civil proceeding may be sufficiently proved by evidence of



circumstances leading to an inference of guilt. *Gibson v. Gibson*, 234 Ark. 954, 356 S.W.2d 728 (1962).

### Appeals.

Where divorce decree was granted under three-year (now 18-month) separation provision of this section, the wife's remarriage during the pendency of appeal did not estop her from appealing the grant of the divorce to the husband, the failure to award her alimony and the settlement of property rights. *Neal v. Neal*, 258 Ark. 338, 524 S.W.2d 460 (1975).

Although in divorce actions the Court of Appeals reviews chancery cases de novo, it does not disturb a chancellor's finding unless it is clearly against a preponderance of the evidence. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

### Attorney's Fees.

The award of attorney's fees in divorce cases is a matter lying within the sound judicial discretion of the chancellor, the exercise of which will not be disturbed on appeal in the absence of its abuse. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979).

### Chancery Court.

The chancery court has the power to decree separate maintenance to the wife. *Gilliam v. Gilliam*, 232 Ark. 765, 340 S.W.2d 272 (1960).

Chancery courts have the power to set aside a default divorce, even after the death of one of the parties, if property interests of the survivor are affected. *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

### Comparative Fault.

Where a husband sued for a divorce, and his wife cross-claimed for a limited divorce from bed and board and both the husband and wife were at fault, nevertheless, the wife was entitled to a limited divorce as the party less at fault, since her husband was the greater and first offender. *Posey v. Posey*, 268 Ark. 894, 597 S.W.2d 834 (Ct. App. 1980).

### Condonation.

Where woman had knowledge of husband's indignities, cruelties and drunkenness she was not entitled to a divorce because she knew the facts at the time of the marriage. *Williamson v. Williamson*, 212 Ark. 12, 204 S.W.2d 785 (1947).

### Cruelty.

Wife will not be granted a divorce on account of the cruelty of her husband in chastising her if she has given him serious provocation by her imprudent conduct. *Shirey v. Shirey*, 87 Ark. 175, 112 S.W. 369 (1908).

Profane and abusive language employed by a husband toward his wife will not constitute legal cruelty where it does not appear that her health was impaired or her condition rendered intolerable. *Kientz v. Kientz*, 104 Ark. 381, 149 S.W. 86 (1912).

Mere incompatibility of temperament or want of congeniality and the consequent quarrels causing unhappiness are not sufficient to constitute that cruelty which under the statute will justify divorce. *Kientz v. Kientz*, 104 Ark. 381, 149 S.W. 86 (1912); *Disheroon v. Disheroon*, 211 Ark. 519, 201 S.W.2d 17 (1947).

There must be proof of specific acts of cruelty. *Dunn v. Dunn*, 114 Ark. 516, 170 S.W. 234 (1914).

A husband is not entitled to a divorce on account of his wife's cruelty toward his children by a former wife where it appears that her cruelty is not habitual nor exercised with the intent of causing suffering to the husband. *Poe v. Poe*, 149 Ark. 62, 231 S.W. 198 (1921).

Evidence sufficient to find spouse entitled to a divorce on the ground of cruelty. *Crabtree v. Crabtree*, 154 Ark. 401, 242 S.W. 804 (1922).

There were grounds for a divorce based on cruel and barbarous treatment where husband lunged at wife through the window of her car, grabbed her neck, pushed her against the seat, and strangled her to the point that she could not breathe and felt as if she were choking. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

### Divorce from Bed and Board.

A limited divorce is called divorce from bed and board in the statute; it is also known as divorce a mensa et thoro. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979).

The grounds on which a divorce from bed and board may be granted are the same as those specified for an absolute divorce. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979); *Kesterson v. Kesterson*, 21 Ark. App. 287, 731 S.W.2d 786 (1987).

The statutory remedy of limited divorce (divorce mensa et thoro) is available only

on proof of one of the statutory grounds. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

### Foreign Decree.

Decree for wife in husband's suit for divorce in another state charging habitual indulgence in violent and ungovernable fits of temper and extreme cruelty was held *res judicata* in subsequent suit in Arkansas charging indignities rendering husband's condition in life intolerable. *Blauvelt v. Blauvelt*, 199 Ark. 710, 136 S.W.2d 201 (1940).

Decree for wife in husband's suit for divorce in another state on grounds of ungovernable temper and extreme cruelty would not be *res judicata* in subsequent suit in Arkansas on ground of desertion if the desertion occurred after the adjudication of former action. *Blauvelt v. Blauvelt*, 199 Ark. 710, 136 S.W.2d 201 (1940).

Former adjudication in other states wherein the legal right created by this section was not available was held not *res judicata* in husband's suit for divorce. *Goud v. Goud*, 203 Ark. 244, 156 S.W.2d 225 (1941).

Where husband and wife lived separate and apart without cohabitation for more than three years, husband was entitled to a divorce on that ground notwithstanding former decree in favor of wife in separate maintenance suit in another state. *Brickey v. Brickey*, 205 Ark. 373, 168 S.W.2d 845 (1943).

Divorce, granted in Arkansas, was reversed, case dismissed and the parties remanded to state which granted a prior separate maintenance agreement for any orders for maintenance. *Swanson v. Swanson*, 212 Ark. 439, 206 S.W.2d 169 (1947).

### Habitual Drunkenness.

One is addicted to habitual drunkenness who has a fixed habit of frequently getting drunk. *Brown v. Brown*, 38 Ark. 324 (1881).

To be a habitual drunkard within the meaning of this section, a person does not have to be constantly drunk nor incapacitated from doing business; it is sufficient if he has a fixed habit of frequently and repeatedly getting drunk when the opportunity presents itself or has lost the will power to resist temptation in that respect. *O'Kane v. O'Kane*, 103 Ark. 382, 147 S.W. 73 (1912).

Evidence insufficient to show that spouse was a habitual drunkard. *Oxford v. Oxford*, 237 Ark. 384, 373 S.W.2d 707 (1963).

### Indignities.

Personal indignities contemplated by the statute as grounds for divorce include rudeness, vulgarity, unmerited reproach, haughtiness, contempt, contumeliousness, studied neglect, intentional incivility, injury, manifest disdain, abusive language, malignant ridicule and every other plain manifestation of settled hate, alienation, and estrangement. *Rose v. Rose*, 9 Ark. 507, 1849 Ark. LEXIS 34 (1849); *Kurtz v. Kurtz*, 38 Ark. 119 (1881).

The indignities to the person need not consist of personal violence. They may consist of unmerited reproach, rudeness, contempt, studied neglect, open insult, and many other things, habitually and systematically pursued, which may, according to the habits of the parties and their condition in life, be just as effectually within the statute as personal violence. *Haley v. Haley*, 44 Ark. 429 (1884). See also *Cate v. Cate*, 53 Ark. 484, 14 S.W. 675 (1890).

Evidence of indignities was sufficient to show entitlement to divorce. *McGee v. McGee*, 72 Ark. 355, 80 S.W. 579 (1904); *Bell v. Bell*, 179 Ark. 171, 14 S.W.2d 551 (1929); *Bullington v. Bullington*, 194 Ark. 1155, 106 S.W.2d 185 (1937); *Morgan v. Morgan*, 202 Ark. 76, 148 S.W.2d 1078 (1941); *Coffey v. Coffey*, 223 Ark. 607, 267 S.W.2d 499 (1954); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *Forsgren v. Forsgren*, 4 Ark. App. 286, 630 S.W.2d 64 (1982); *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Want of congeniality and consequent quarrels are not sufficient to constitute indignities. *Bell v. Bell*, 105 Ark. 194, 150 S.W. 1031 (1912).

The remedy of absolute divorce contemplated by subdivision (b)(4) of this section is for evils which are unavoidable and unendurable and which cannot be relieved by any exertions of the party seeking the aid of the courts. *Meffert v. Meffert*, 118 Ark. 582, 177 S.W. 1 (1915).

To authorize a divorce for indignities, conduct of the offending party must indicate settled hate and manifestation of alienation and estrangement and must have been conducted habitually through a



period of time sufficient to show that the conduct arose through settled malevolence rendering it impossible to discharge the duties of married life and making one's condition in life intolerable. *Preas v. Preas*, 188 Ark. 854, 67 S.W.2d 1013 (1934).

Testimony held insufficient to warrant a divorce for indignities. *Welborn v. Welborn*, 189 Ark. 1063, 76 S.W.2d 98 (1934); *Fine v. Fine*, 209 Ark. 754, 192 S.W.2d 212 (1946); *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Copeland v. Copeland*, 2 Ark. App. 55, 616 S.W.2d 773 (1981).

Person to whom a divorce is granted on the ground of indignities does not have to be wholly blameless. *Coffey v. Coffey*, 223 Ark. 607, 267 S.W.2d 499 (1954).

Condonation of indignities is not a defense if indignities cover a period of time until final separation. *Coffey v. Coffey*, 223 Ark. 607, 267 S.W.2d 499 (1954).

The statutory requirement that indignities of the offending spouse must be such as to make the other's condition intolerable was not satisfied. *Lipscomb v. Lipscomb*, 226 Ark. 956, 295 S.W.2d 335 (1956).

Indignities may mean a number of things in various circumstances, but to constitute the grounds for divorce they must be constantly and persistently pursued with the object and effect of rendering the situation of the opposing party intolerable. *Gibson v. Gibson*, 234 Ark. 954, 356 S.W.2d 728 (1962).

The charge of sexual promiscuity or infidelity is probably the most offensive charge which one spouse can make against the other, and it has been frequently held that to make such a charge without basis is an indignity entitling the person charged to a divorce. *Relaford v. Relaford*, 235 Ark. 325, 359 S.W.2d 801 (1962).

Drunken conduct may be proved along with other acts to establish indignities rendering the plaintiff's life intolerable in which case it is not necessary to show habitual drunkenness for a period of at least a year. *Carmical v. Carmical*, 246 Ark. 1142, 441 S.W.2d 103 (1969).

Although the scope of the indignities ground has undergone considerable expansion throughout the years, it is still necessary that the conduct relied upon

manifest hate, alienation, and estrangement and be constantly and systematically pursued with the purpose and effect of causing an enduring alienation and estrangement and rendering the condition of the spouse intolerable. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979).

In contested cases, indignities do not exist absent habitual, continuous, permanent, and plain manifestation of settled hate, alienation, and estrangement on the part of one spouse, sufficient to render the condition of the other intolerable. *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979).

Drunken conduct may be proved, along with other acts, to establish the general indignities which have rendered the plaintiff's marital life intolerable. *Forsgren v. Forsgren*, 4 Ark. App. 286, 630 S.W.2d 64 (1982).

A divorce will be granted when one spouse proves that the other had offered such indignities to her person as to render her condition in life intolerable; personal indignities may consist of rudeness, unmerited reproach, contempt, studied neglect, open insult and other plain manifestations of settled hate, alienation, or estrangement so habitually, continuously, and permanently pursued as to create an intolerable condition. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

The ground of indignities to the person must be proved by evidence of specific acts and conduct. *Gunnell v. Gunnell*, 30 Ark. App. 4, 780 S.W.2d 597 (1989).

Where wife asserted indignities as grounds in her complaint for divorce but the chancellor granted the divorce on the grounds of "spousal abuse," the appellate court found no reversible error as the term "spousal abuse" was, under the circumstances, equivalent to the recognized ground of cruel and barbarous treatment. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Trial court did not clearly err in granting a wife a divorce on the ground of general indignities pursuant to subdivision (b)(3)(C) of this section because the wife showed that the husband frequently directed his wrath toward her in a manner that embarrassed, humiliated, and frightened her; that he publicly and privately harangued her over minor matters; that he acted in a dismissive and suspicious



manner by leaving the house for hours without explanation, making a late-night phone call without saying to whom he was speaking, and being in possession of a romantic card from another woman; that he gambled frequently; and that she could not account for a large portion of the couple's joint funds. *Ransom v. Ransom*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 427 (Apr. 15, 2009).

### **Insanity.**

A wife who was guardian for her insane husband and continued to operate his business as guardian was entitled to a third of his personal property awarded under a decree granted upon subdivision (7) of this section as it was concluded that that subdivision was not independent or free from the incidents attaching to decrees based upon prior law. *Chandler v. Chandler*, 211 Ark. 332, 200 S.W.2d 508 (1947).

A divorce for incurable insanity granted to a spouse who is guardian for the insane requires service on the superintendent or physician in charge of the institution where the insane is confined and on a guardian ad litem and lack of representation by guardian ad litem and service thereon renders the divorce voidable and subject to direct attack on the ground of unavoidable casualty even after the death of the spouse to whom the divorce was granted, his or her personal representative and attorney being proper parties defendant in the action to vacate the divorce decree. *Jackson v. Bowman*, 226 Ark. 753, 294 S.W.2d 344 (1956).

Where a divorce was granted on grounds of the wife's insanity, the trial court's determination that the balance of the wife's attorney fees should be paid from the wife's estate because of her independent financial resources was reversed as the insane spouse is entitled to every reasonable protection of her interests, including the finest legal services that can be obtained for her, at her husband's expense. *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965).

### **Nonsupport.**

Evidence insufficient to show that spouse lacked the common necessities of life. *Saughey v. Saughey*, 228 Ark. 110, 305 S.W.2d 856 (1957); *Oxford v. Oxford*, 237 Ark. 384, 373 S.W.2d 707 (1963).

### **Pleadings.**

Party in a divorce proceeding prior to trial of the action may amend his complaint and allege the maturity of a cause of action since the filing of the original complaint. *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949).

If evidence is introduced during the trial of a divorce proceeding showing a different cause of action from the one alleged in the complaint, the defendant may waive the right to object to the new cause of action. *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949).

Where plaintiff's complaint for divorce alleges one ground, evidence introduced at trial shows a cause of divorce on another ground, and defendant objects to the new cause of action, court must dismiss the suit as to first ground but without prejudice to the right of the plaintiff to file a new suit on the new ground. *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949).

Where a wife amended her original divorce complaint to seek instead only separate maintenance, that was the only type of decree which could have been entered by the trial court; the chancellor erred in granting the wife a divorce from bed and board and erred in dividing the marital property under § 9-12-315. *Spencer v. Spencer*, 275 Ark. 112, 627 S.W.2d 550 (1982).

### **Proof.**

Husband was entitled to reversal of a divorce decree granted on the ground of general indignities; although the husband waived corroboration of grounds and failed to object to the sufficiency of proof of grounds at trial, the wife was required to offer sufficient, non-conclusory proof of grounds, which she failed to do. She offered only a general affirmative response to her attorney's question as to whether the husband had treated her in such a manner as to render her condition in life intolerable. *Dee v. Dee*, 99 Ark. App. 159, 258 S.W.3d 405 (2007).

### **—Admissibility of Evidence.**

Ex parte affidavit of a third person cannot be used as independent evidence. Such affidavit cannot be received as independent testimony or as corroboration in a divorce cause. *Wood v. Wood*, 232 Ark. 812, 340 S.W.2d 393 (1960).

**—Burden of Proof.**

Marriage contract should not be severed except upon clear proof of one or more of the grounds prescribed by this section. *Fania v. Fania*, 199 Ark. 368, 133 S.W.2d 654 (1939).

In an action for divorce the burden was on the plaintiff to show by corroborative evidence and a preponderance thereof, separation for three years (now 18 months) without cohabitation. *Ross v. Ross*, 213 Ark. 742, 213 S.W.2d 360 (1948).

Divorce is a creature of statute and can only be granted when statutory grounds have been proved and corroborated. *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984); *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Regardless of whether a divorce is contested or uncontested, the injured party must always prove his or her ground(s) for divorce as set forth in this section; in other words, existing statutory law does not allow a spouse to stipulate to or waive grounds for divorce. *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984); *Rachel v. Rachel*, 21 Ark. App. 77, 733 S.W.2d 735 (1987); *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

**—Corroboration.**

Testimony held to be insufficiently corroborated. *Ledwidge v. Ledwidge*, 204 Ark. 1032, 166 S.W.2d 267 (1942); *Stimmel v. Stimmel*, 218 Ark. 293, 235 S.W.2d 959 (1951).

Allegation of separation for three years (now 18 months), which was admitted by the defendant, required corroboration. *Allen v. Allen*, 211 Ark. 335, 200 S.W.2d 324 (1947).

Corroborating evidence held to be sufficient. *Obennoskey v. Obennoskey*, 215 Ark. 358, 220 S.W.2d 610 (1949); *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Corroboration is as essential to the granting of a divorce on the grounds of three-year (now 18-month) separation as it is in any other case, but, where it is plain that the divorce action is not collusive, the corroboration may be comparatively slight; nonetheless, there must be corroboration to some substantial fact or circumstance independent of the testimony of the party asserting the claimed separation period which would lead an

impartial and reasonable mind to believe that the material testimony is true. *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982).

**Res Judicata.**

The rule of res judicata in divorce suits applies only when the second suit is on the same cause of action as the first suit. *Narisi v. Narisi*, 233 Ark. 525, 345 S.W.2d 620 (1961).

**Separation.****—In General.**

Divorce granted on grounds of separation. *Clarke v. Clarke*, 201 Ark. 10, 143 S.W.2d 540 (1940); *Day v. Langley*, 202 Ark. 775, 152 S.W.2d 308 (1941); *Goud v. Goud*, 203 Ark. 244, 156 S.W.2d 225 (1941); *McCall v. McCall*, 204 Ark. 836, 165 S.W.2d 255 (1942); *Carty v. Carty*, 222 Ark. 183, 258 S.W.2d 43 (1953); *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

Subdivision (b)(5) of this section makes a decree of divorce mandatory on the court at the suit of either party, where the conditions of the statute have been met, no matter what caused the separation. *Brooks v. Brooks*, 201 Ark. 14, 143 S.W.2d 1098 (1940); *McCormick v. McCormick*, 246 Ark. 348, 438 S.W.2d 23 (1969) (decision prior to the 1991 amendments).

Where husband left wife and child with the understanding that after he established himself they would join him, there was not a separation under subdivision (b)(5) of this section until they ceased to correspond with each other; and husband, praying for a divorce on that ground in cross-complaint to wife's suit for maintenance, had burden to show separation. *Bockman v. Bockman*, 202 Ark. 585, 151 S.W.2d 99 (1941).

If plaintiff files suit for divorce on statutory ground of desertion for three years (now 18 months) the court cannot consider any defense by the defendant based on the ground of misconduct of the plaintiff, as this section is mandatory. *Warren v. Warren*, 214 Ark. 379, 216 S.W.2d 398 (1949).

Husband is entitled to divorce on ground of separation if separated from wife for three years (now 18 months), regardless of fault upon his part. *Mohr v. Mohr*, 214 Ark. 607, 215 S.W.2d 1020 (1949).

In a suit for divorce on the ground of three years' separation (now 18 months'



separation), the question of who was the injured party may only be considered in settlement of property rights and the question of alimony. *Grytbak v. Grytbak*, 216 Ark. 674, 227 S.W.2d 633 (1950); *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

In action by wife to set aside divorce granted on grounds of separation, allegation that separation was result of husband having deserted wife constituted meritorious defense even though wife admitted separation. *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

### —Cohabitation.

Evidence established that husband and wife were not living separate and apart from each other within subdivision (b)(5) of this section. *McClure v. McClure*, 205 Ark. 1032, 172 S.W.2d 243 (1943); *Varnell v. Varnell*, 207 Ark. 711, 182 S.W.2d 466 (1944); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *Oxford v. Oxford*, 237 Ark. 384, 373 S.W.2d 707 (1963).

When the legislature used the word "cohabitation," the popular sense purporting sexual intercourse, rather than the literal or derivative meaning of living together, was intended. *McClure v. McClure*, 205 Ark. 1032, 172 S.W.2d 243 (1943); *Varnell v. Varnell*, 207 Ark. 711, 182 S.W.2d 466 (1944).

Where access to a spouse is admitted, marital relations will be presumed. *Hancock v. Hancock*, 222 Ark. 823, 262 S.W.2d 881 (1953).

### —Evidence.

Proof of alleged misconduct occurring more than five years before filing suit was admissible to show injured party. *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781 (1957).

Evidence of incidents which happened after separation was admissible to show who was the injured party. *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781 (1957).

Where for all outward appearances, the husband and wife lived separate and apart, and not as husband and wife, for over three years (now 18 months) immediately prior to the decree of divorce, the wife's stay of four nights at the motel where the husband lived did not break the continuity of their separation where, dur-

ing the stay, the parties slept apart, and the husband denied having sexual relations with the wife. *Santostefano v. Santostefano*, 18 Ark. App. 173, 712 S.W.2d 324 (1986).

### —Mutuality.

Subdivision (b)(5) of this section must be construed as though it read "when they have lived apart for three consecutive years [now 18 months]" so as to contemplate an agreement or understanding that they will act in concert of purpose, voluntarily living apart for three years, at the end of which period either may obtain a divorce from the other by alleging and establishing mutuality of the separation. *White v. White*, 196 Ark. 29, 116 S.W.2d 616 (1938).

Insane wife cannot be said to have voluntarily lived apart from her husband, and there was no element of mutuality in the separation which established a ground for divorce under subdivision (b)(6) of this section. *Carlson v. Carlson*, 198 Ark. 231, 128 S.W.2d 242 (1939).

Subdivision (b)(5) of this section assumes that the period of living apart without cohabitation for three years (now 18 months) must have been the conscious act of both parties and the purpose is not to grant divorce on ground of insanity of either party. *Serio v. Serio*, 201 Ark. 11, 143 S.W.2d 1097 (1940); *Wilder v. Wilder*, 202 Ark. 414, 181 S.W.2d 17 (1944).

Husband was entitled to a divorce under subdivision (b)(5) of this section where parties had lived apart without cohabitation for three years (now 18 months) even though separation was involuntary upon wife's part and was under his coercion. *Brooks v. Brooks*, 201 Ark. 14, 143 S.W.2d 1098 (1940).

### —Time Period.

Supreme Court has no authority to exclude from separation contemplated by subdivision (b)(5) of this section period of time during which parties lived apart under separation decree. *Jones v. Jones*, 199 Ark. 1000, 137 S.W.2d 238 (1940).

Time spent in military service may be included in statutory period required for separation. *Mogensky v. Mogensky*, 212 Ark. 28, 204 S.W.2d 782 (1947); *Mohr v. Mohr*, 214 Ark. 607, 215 S.W.2d 1020 (1949).

**Cited:** *Parrish v. Parrish*, 195 Ark. 766, 114 S.W.2d 29 (1938); *Smith v. Smith*, 219



Ark. 278, 242 S.W.2d 350 (1951); Oakes v. S.W.2d 126 (1952); McIntire v. McIntire, Oakes, 219 Ark. 363, 242 S.W.2d 128 270 Ark. 381, 605 S.W.2d 474 (Ct. App. (1951); Bishop v. Lucas, 220 Ark. 871, 251 1980).

## 9-12-302. Equitable proceedings.

The action for alimony or divorce shall be by equitable proceedings.

**History.** Civil Code, § 456; C. & M. Dig., § 3499; Pope's Dig., § 4380; A.S.A. 1947, § 34-1201.

## CASE NOTES

### ANALYSIS

In General.  
Alimony.  
Jurisdiction.  
Mental Capacity.

### In General.

A state of marriage can only be dissolved during the lives of the parties to the marriage by annulment or by divorce. *Mabry v. Mabry*, 259 Ark. 622, 535 S.W.2d 824 (1976).

### Alimony.

An independent action for alimony will lie. *Wood v. Wood*, 54 Ark. 172, 15 S.W. 459 (1891); *Shirey v. Hill*, 81 Ark. 137, 98 S.W. 731 (1906); *Kientz v. Kientz*, 104 Ark. 381, 149 S.W. 86 (1912); *Harmon v. Harmon*, 152 Ark. 129, 237 S.W. 1096 (1922); *Kesterson v. Kesterson*, 21 Ark. App. 287, 731 S.W.2d 786 (1987).

The chancery court and the Supreme Court on appeal had jurisdiction to award suit money and alimony to a wife notwithstanding a denial of a divorce to the husband. *Gabler v. Gabler*, 209 Ark. 459, 190 S.W.2d 975 (1945).

Enforcement of a contract for alimony is an action for alimony and not for debt, even though the obligation existed by reason of agreement between the parties.

*McCue v. McCue*, 210 Ark. 826, 197 S.W.2d 938 (1946).

This section allows independent proceeding for the division of marital property or alimony when neither the division nor alimony could have been considered in the divorce action. *Woods v. Woods*, 285 Ark. 175, 686 S.W.2d 387 (1985).

Income from a spendthrift trust can be reached by means of equitable garnishment or other means to satisfy a judgment for an arrearage in alimony. *Council v. Owens*, 28 Ark. App. 49, 770 S.W.2d 193 (1989).

### Jurisdiction.

The chancery court has exclusive jurisdiction of all cases involving matters of child support; neither the municipal nor circuit court has concurrent jurisdiction with chancery court to enforce an agreement for child support. *Boren v. Boren*, 318 Ark. 378, 885 S.W.2d 852 (1994).

### Mental Capacity.

The mere fact that a man had been adjudged incompetent under Uniform Veterans Guardian Act and a guardian appointed for his estate did not affect his capacity to marry or sue for divorce. *Lovett v. Lovett*, 254 Ark. 349, 493 S.W.2d 435 (1973).

**Cited:** *Jackson v. Jackson*, 253 Ark. 1033, 490 S.W.2d 809 (1973).

## 9-12-303. Venue — Service of process.

(a) The proceedings shall be in the county where the complainant resides unless the complainant is a nonresident of the State of Arkansas and the defendant is a resident of the state, in which case the proceedings shall be in the county where the defendant resides and, in any event, the process may be directed to any county in the state.

(b) In actions initiated by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or the Department of Human Services, proceedings may also be commenced in the county where the defendant resides.

(c) When a spouse initiates an action against the other spouse for an absolute divorce, divorce from bed and board, or separate maintenance, then the venue for the initial action shall also be the venue for any of the three (3) named actions filed by the other spouse, regardless of the residency of the other spouse.

**History.** Rev. Stat., ch. 51, § 5; C. & M. Dig., § 3502; Pope's Dig., § 4383; Acts 1963, No. 190, § 1; 1979, No. 799, § 1;

A.S.A. 1947, § 34-1204; Acts 1987, No. 12, § 1; 1995, No. 1184, § 4.

## RESEARCH REFERENCES

**Ark. L. Rev.** Clarification of Vacation Divorce Decrees on Constructive Service, 13 Ark. L. Rev. 345.

Grounds for Venue in Arkansas — A Survey, 25 Ark. L. Rev. 468.

Recent Developments, Child Support Decrees — Uniform Enforcement of For-

eign Judgments Act Mathews v. Mathews, 59 Ark. L. Rev. 803.

**U. Ark. Little Rock L. Rev.** Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

## CASE NOTES

### ANALYSIS

Concurrent Venue Improper.

Cross-Complaint.

Foreign Jurisdiction.

Fraud.

Residence.

—In General.

—Duration.

—Evidence.

—Separate Domicile.

Waiver.

### Concurrent Venue Improper.

Under subsection (c) of this section, where the initial action filed in Pulaski County was still pending on appeal when the second suit was filed in Saline County, Pulaski County was the county of proper venue, and the Saline County court erred in refusing to dismiss the action filed in that court. Tortorich v. Tortorich, 324 Ark. 128, 919 S.W.2d 213 (1996).

### Cross-Complaint.

Where wife instituted suit in a county other than her county of residence, and husband, who resided in that county, filed a cross-complaint without questioning the jurisdiction of the court on the complaint,

court was held to have acquired jurisdiction of the parties and subject matter of the suit under the cross-complaint. Laird v. Laird, 201 Ark. 483, 145 S.W.2d 27 (1940).

### Foreign Jurisdiction.

The law will not presume that a husband invoked the aid of a foreign jurisdiction and obtained a divorce from the fact that he cohabited with another woman. Orsburn v. Graves, 213 Ark. 727, 210 S.W.2d 496 (1948) (decision prior to 1963 amendment).

### Fraud.

Where complainant was not a resident of the county and constructive service was fraudulently attempted on the defendant, the court had no jurisdiction of the cause, and could not proceed on the original suit in an action by the defendant to vacate the decree. Corney v. Corney, 79 Ark. 289, 95 S.W. 135 (1906).

Where husband obtained a divorce decree in a county by fraudulently claiming that he was a resident of the county and also fraudulently claiming that the defendant was a nonresident of Arkansas, the divorce decree was an absolute nullity and



wife was entitled to bring a suit for support and maintenance in the county of her residence. *Cloman v. Cloman*, 229 Ark. 447, 316 S.W.2d 817 (1958).

### **Residence.**

#### **—In General.**

This section contemplates actual residence. *Vanness v. Vanness*, 128 Ark. 543, 194 S.W. 498 (1917).

The court was without jurisdiction when evidence showed that residence was acquired solely for the purpose of obtaining a divorce. *McLaughlin v. McLaughlin*, 193 Ark. 207, 99 S.W.2d 571 (1936); *Allen v. Allen*, 211 Ark. 335, 200 S.W.2d 324 (1947).

The provisions of this law may be availed only by one who actually and in good faith became and was a resident of this state for the period of time prescribed by this section, but the actual residence, once established, is not lost by temporary absence from the state. *Tarr v. Tarr*, 207 Ark. 622, 182 S.W.2d 348 (1944).

In suit based on three-years' (now 18 months') separation plaintiff did not establish a bona fide domicile in Arkansas where evidence showed that in prior litigation it had been determined by courts in other states that he had established a domicile in another state. *Smith v. Smith*, 219 Ark. 278, 242 S.W.2d 350 (1951).

There must be a bona fide intention to make county in which suit is filed the residence of the complainant. *Smith v. Smith*, 219 Ark. 876, 245 S.W.2d 207 (1952).

Residence under this section means domicile. *Smith v. Smith*, 219 Ark. 876, 245 S.W.2d 207 (1952).

Regardless of the defendant spouse's residence, once a plaintiff spouse has filed for (1) absolute divorce, (2) limited divorce, or (3) separate maintenance, the defendant spouse can no longer go to a different court (division or county) to file any one of the 3 named marital-related actions, but must file any new marital cause of action in the same action the plaintiff spouse has already initiated. *Tortorich v. Tortorich*, 333 Ark. 15, 968 S.W.2d 53 (1998).

#### **—Duration.**

No certain length of time is necessary to fix the residence contemplated by this statute, but it must be such, with the

attendant circumstances surrounding its acquirement, as to manifest a bona fide intention of making it a fixed and permanent place of abode. *McLaughlin v. McLaughlin*, 193 Ark. 207, 99 S.W.2d 571 (1936).

The brevity of a wife's residence, of course, was relevant to her intention, but not controlling, in view of the fact that no particular length of time is required for the establishment of a domicile. *Moon v. Moon*, 265 Ark. 310, 578 S.W.2d 203 (1979).

No particular length of time is required for the establishment of a domicile, but there must be residence attended by such circumstances surrounding its acquirement as to manifest a bona fide intention of making it a fixed and permanent place of abode. *Moon v. Moon*, 265 Ark. 310, 578 S.W.2d 203 (1979); *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).

#### **—Evidence.**

Evidence sustained the conclusion that husband's move from county where he formerly resided to county where he instituted suit for divorce was not made in good faith. *Hillman v. Hillman*, 200 Ark. 340, 138 S.W.2d 1051 (1940).

Evidence was held to show that plaintiff, who went to another state, continued his residence in this state. *Morgan v. Morgan*, 202 Ark. 76, 148 S.W.2d 1078 (1941).

Evidence insufficient to establish that complainant was bona fide resident. *Barth v. Barth*, 204 Ark. 151, 161 S.W.2d 393 (1942).

Evidence sufficient to establish that complainant was resident. *Feldman v. Feldman*, 205 Ark. 544, 169 S.W.2d 866 (1943); *Cole v. Cole*, 233 Ark. 210, 343 S.W.2d 561 (1961); *Puterbaugh v. Puterbaugh*, 254 Ark. 61, 491 S.W.2d 386 (1973).

#### **—Separate Domicile.**

A wife may acquire a separate domicile from that of her husband and at that domicile she may institute proceedings for divorce. *McLaughlin v. McLaughlin*, 193 Ark. 207, 99 S.W.2d 571 (1936).

Trial court had jurisdiction of suit for divorce by wife based on three years' (now 18 months') separation, where wife left state for residence in sanatorium outside of state due to tuberculosis, since domicile was not changed by absence from state for



purpose of benefiting health. *Oakes v. gis v. Hargis*, 292 Ark. 487, 731 S.W.2d 198 Oakes, 219 Ark. 363, 242 S.W.2d 128 (1987).

**Cited:** *Isely v. Isely*, 287 Ark. 401, 700 S.W.2d 49 (1985).

#### **Waiver.**

Venue of an action may be waived. Har-

### **9-12-304. Pleadings — Interrogatories.**

(a) The pleadings are not required to be verified by affidavit.

(b) However, either party may file interrogatories to the other in regard to any matter of property involved in the action that shall be answered on oath as interrogatories in other actions and have the same effect.

**History.** Civil Code, § 457; C. & M. Dig., § 3503; Pope's Dig., § 4384; A.S.A. 1947, § 34-1205.

### **9-12-305. No judgment pro confesso.**

The statements of the complaint for a divorce shall not be taken as true because of the defendant's failure to answer or admission of their truth on the part of the defendant.

**History.** Civil Code, § 458; C. & M. Dig., § 3504; Pope's Dig., § 4385; A.S.A. 1947, § 34-1207.

## **RESEARCH REFERENCES**

**Ark. L. Rev.** Clarification of Vacation Divorce Decrees on Constructive Service, 13 Ark. L. Rev. 345.

## **CASE NOTES**

#### **Purpose.**

In a contested divorce case the corroboration may be relatively slight since the purpose of the requirement is to prevent collusion. *Goodlett v. Goodlett*, 206 Ark. 1048, 178 S.W.2d 666 (1944); *Fitzgerald v.*

*Fitzgerald*, 227 Ark. 1063, 303 S.W.2d 577 (1957); *Anderson v. Anderson*, 234 Ark. 379, 352 S.W.2d 369 (1961).

**Cited:** *Smiley v. Smiley*, 247 Ark. 933, 448 S.W.2d 642 (1970); *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977).

### **9-12-306. Corroboration.**

(a) In uncontested divorce suits, corroboration of the plaintiff's grounds for divorce shall not be necessary or required.

(b) In contested suits, corroboration of the injured party's grounds may be expressly waived in writing by the other spouse.

(c)(1) This section does not apply to proof as to residence, which must be corroborated, and does not apply to proof of separation and continuity of separation without cohabitation, which must be corroborated.

(2) In uncontested cases, proof as to residence and proof of separation and continuity of separation without cohabitation may be corroborated by either oral testimony or verified affidavit of persons other than the parties.

**History.** Acts 1969, No. 398, § 1; 1981, No. 267, § 1; 1985, No. 474, § 1; A.S.A. 1947, § 34-1207.1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

Arkansas Law Survey, Morgan, Family Law, 8 U. Ark. Little Rock L.J. 169.

## CASE NOTES

### ANALYSIS

Purpose.

Contested Cases.

Residence.

Separation.

Stipulation or Waiver of Grounds.

### Purpose.

Purpose of requiring corroboration is to prevent parties from obtaining a divorce by collusion. *Rachel v. Rachel*, 21 Ark. App. 77, 729 S.W.2d 16 (1987), rev'd, 294 Ark. 110, 741 S.W.2d 240 (1987).

### Contested Cases.

Although this section removed the need for corroboration in uncontested divorce suits it did not remove the requirement in contested suits. *Adams v. Adams*, 252 Ark. 20, 477 S.W.2d 183 (1972); *Morrow v. Morrow*, 270 Ark. 31, 603 S.W.2d 431 (Ct. App. 1980).

In contested suit wife's testimony was not corroborated and she was therefore not entitled to a divorce. *Peter v. Peter*, 10 Ark. App. 292, 663 S.W.2d 744 (1984).

In contested cases where corroboration has not been waived but there is no indication of collusion, the corroborating evidence of grounds for divorce may be relatively slight. *Gunnell v. Gunnell*, 30 Ark. App. 4, 780 S.W.2d 597 (1989).

### Residence.

An issue of residence deals directly with the authority, power and right of the trial court to act and therefore, the corroborating evidence, although relatively slight, should not be speculative and vague in

scope. *Hingle v. Hingle*, 264 Ark. 442, 572 S.W.2d 395 (1978).

Proof of residency held corroborated. *Rachel v. Rachel*, 294 Ark. 110, 741 S.W.2d 240 (1987).

Residency must be corroborated and proven in every instance, despite admission by a defendant. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

The purpose of the corroboration of residency rule is to prevent procurement of divorce by collusion, and when there is no collusion, the corroboration required is slight. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Proof of residency in a divorce action may not be dispensed with or supplied by the express and direct action of the parties, and it may not be supplied by their indirect actions through application of the doctrine of estoppel. *Araneda v. Araneda*, 48 Ark. App. 236, 894 S.W.2d 146 (1995).

Trial court had jurisdiction to grant a divorce as the necessary corroboration of the wife's residency was supplied by the wife's daughter, who testified that the wife had been a resident in the county for 9 or 10 years before filing for divorce and reiterated her previous testimony that the wife was a resident of the county for at least 3 months preceding the entry of the divorce decree. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Husband was ordered to file a substituted brief in his appeal to the supreme court in which he challenged the circuit court's jurisdiction to enter the divorce decree as he failed to abstract his wife's testimony pursuant to Ark. Sup. Ct. & Ct.

App. R. 4-2 regarding the residency requirements of § 9-12-307(a)(1)(A) and subdivision (c)(1) of this section. *Roberts v. Roberts*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 381 (May 21, 2009).

### **Separation.**

Although subdivision (c)(1) of this section requires that proof of separation and continuity of separation without cohabitation be corroborated, it relates only to those grounds found in § 9-12-301(b)(5) and (6) in which separation without cohabitation is an element, or cases in which cohabitation is an affirmative defense. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

### **Stipulation or Waiver of Grounds.**

Regardless of whether a divorce is contested or uncontested, the injured party must always prove his or her ground(s) for divorce; in other words, existing statutory law does not allow a spouse to stipulate to

or waive grounds for divorce. *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984).

Oral waiver made in open court and recorded by the reporter is as valid as though transcribed and executed. *Rachel v. Rachel*, 294 Ark. 110, 741 S.W.2d 240 (1987).

A judgment of divorce was reversed and the case was dismissed without prejudice where the plaintiff wife failed to corroborate her grounds for divorce and she also did not provide an expressed waiver of the requirement of corroboration. *Oates v. Oates*, 340 Ark. 431, 10 S.W.3d 861, appeal dismissed, 340 Ark. 480, 10 S.W.3d 891 (2000).

**Cited:** *Holden v. Holden*, 269 Ark. 850, 601 S.W.2d 247 (Ct. App. 1980); *Calhoun v. Calhoun*, 3 Ark. App. 270, 625 S.W.2d 545 (1981); *Price v. Price*, 29 Ark. App. 212, 780 S.W.2d 342 (1989).

## **9-12-307. Matters that must be proved.**

(a) To obtain a divorce, the plaintiff must prove, but need not allege, in addition to a legal cause of divorce:

(1)(A) A residence in the state by either the plaintiff or defendant for sixty (60) days next before the commencement of the action and a residence in the state for three (3) full months before the final judgment granting the decree of divorce.

(B) No decree of divorce, however, shall be granted until at least thirty (30) days have elapsed from the date of the filing of the complaint.

(C) When personal service cannot be had upon the defendant or when the defendant fails to enter his or her appearance in the action, no decree of divorce shall be granted the plaintiff until the plaintiff has maintained an actual residence in the State of Arkansas for a period of not less than three (3) full months;

(2) That the cause of action and cause of divorce occurred or existed in this state or, if out of the state, that it was a legal cause of divorce in this state, the laws of this state to govern exclusively and independently of the laws of any other state as to the cause of divorce; and

(3) That the cause of divorce occurred or existed within five (5) years next before the commencement of the suit.

(b) “Residence” as used in subsection (a) of this section is defined to mean actual presence, and upon proof of that the party alleging and offering the proof shall be considered domiciled in the state, and this is declared to be the legislative intent and public policy of the State of Arkansas.



**History.** Civil Code, § 459; C. & M. Dig., § 3505; Acts 1931, No. 71, p. 201; Pope's Dig., § 4386; Acts 1957, No. 36; 1961, No. 146; A.S.A. 1947, §§ 34-1208, 34-1208.1; Acts 1993, No. 418, § 1; 1999, No. 97, § 1.

## RESEARCH REFERENCES

**Ark. L. Rev.** Conflict of Laws, 3 Ark. L. Rev. 20, 29. Conflict of Laws and Family Law, 14 Ark. L. Rev. 47.

## CASE NOTES

### ANALYSIS

Constitutionality.

Purpose.

Cause Arising Outside State.

Months.

Notice.

Residence.

—In General.

—Appearance.

—Evidence.

—Military Service.

Time of Cause.

### Constitutionality.

This subsection (b) of this section does not violate the full faith and credit clause or the due process clause of the Federal Constitution. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).

### Purpose.

Subsection (b) of this section substitutes a simple requirement of residence, which can be proved with certainty, for the nebulous concept of domicile, which usually cannot be proved. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).

Subsection (b) of this section was intended to restore the rule of *Squire v. Squire*, 186 Ark. 511, 54 S.W.2d 281 (1932) that only residence, not domicile, is required under this section. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).

### Cause Arising Outside State.

Although desertion had not continued for necessary period to obtain divorce under laws of state where desertion first occurred, where plaintiff had in good faith moved to this state after desertion, and desertion continued after the required residence period elapsed, divorce could be granted. *Mullenband v. Mullenband*, 137 Ark. 505, 208 S.W. 801 (1919).

### Months.

Where this statute says months, it means calendar months. *Parseghian v. Parseghian*, 206 Ark. 869, 178 S.W.2d 49 (1944).

### Notice.

One spouse should not come into this state and obtain a divorce under this act without seeing to it that the nonresident spouse receives a notice of the pendency of the divorce suit in time to appear and defend the case if he or she desires to do so. *Stinson v. Stinson*, 203 Ark. 888, 159 S.W.2d 446 (1942).

### Residence.

Trial court had jurisdiction to grant a divorce as the necessary corroboration of the wife's residency was supplied by the wife's daughter, who testified that the wife had been a resident in the county for 9 or 10 years before filing for divorce and reiterated her previous testimony that the wife was a resident of the county for at least 3 months preceding the entry of the divorce decree. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Trial court had proper jurisdiction over parties' divorce proceeding because under this section, an ex-wife was only required to reside in the state for 60 days prior to the commencement of the proceeding, not immediately before entry of the divorce decree. Accordingly, the fact that the ex-wife moved to and resided in New York while the action was pending and when the divorce decree was issued did not impact the trial court's jurisdiction. *Roberts v. Yanyan Yang*, 102 Ark. App. 384, 285 S.W.3d 689 (2008).

Husband was ordered to file a substituted brief in his appeal to the supreme court in which he challenged the circuit court's jurisdiction to enter the divorce decree as he failed to abstract his wife's testimony pursuant to Ark. Sup. Ct. & Ct.

App. R. 4-2 regarding the residency requirements of subdivision (a)(1)(A) of this section and § 9-12-306(c)(1). *Roberts v. Roberts*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 381 (May 21, 2009).

#### —In General.

Residence for the required period in this state is jurisdictional. *Parseghian v. Parseghian*, 206 Ark. 869, 178 S.W.2d 49 (1944); *Porter v. Porter*, 209 Ark. 371, 195 S.W.2d 53 (1945); *Troillet v. Troillet*, 227 Ark. 624, 300 S.W.2d 273 (1957).

Domicile or residence is sufficient for jurisdiction in divorce cases. *Weaver v. Weaver*, 231 Ark. 341, 329 S.W.2d 422 (1959).

The purpose of the corroboration of residency rule is to prevent procurement of divorce by collusion, and when there is no collusion, the corroboration required is slight. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Residency must be corroborated and proven in every instance, despite admission by a defendant. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

#### —Appearance.

Wife's appearance before court did not confer jurisdiction upon the court if jurisdiction did not otherwise exist. *Kennedy v. Kennedy*, 205 Ark. 650, 169 S.W.2d 876 (1943).

Wife could not file petition to set aside decree on the ground that husband was not a resident of county when decree was entered where she had filed a waiver and secured an attorney who represented her at trial and from which no appeal was taken. *Anderson v. Anderson*, 223 Ark. 571, 267 S.W.2d 316 (1954).

#### —Evidence.

Evidence insufficient to find residence requirement for jurisdiction purposes under this section was complied with. *Carlson v. Carlson*, 198 Ark. 231, 128 S.W.2d 242 (1939); *Gilmore v. Gilmore*, 204 Ark. 643, 164 S.W.2d 446 (1942); *Cassen v. Cassen*, 211 Ark. 582, 201 S.W.2d 585 (1947); *Walters v. Walters*, 213 Ark. 497, 211 S.W.2d 110 (1948); *Stimmel v. Stimmel*, 218 Ark. 293, 235 S.W.2d 959 (1951); *May v. May*, 221 Ark. 585, 254 S.W.2d 957 (1953); *Troillet v. Troillet*, 227 Ark. 624, 300 S.W.2d 273 (1957); *Graham v. Graham*, 254 Ark. 646, 495 S.W.2d 144 (1973).

Residence in the state for two months before filing suit for divorce and for one month thereafter before the rendition of the decree is sufficient under this statute. *Brickey v. Brickey*, 205 Ark. 373, 168 S.W.2d 845 (1943).

Evidence sufficient to find that residence requirement for jurisdiction purposes under this section was complied with. *Buck v. Buck*, 205 Ark. 918, 171 S.W.2d 939 (1943); *Young v. Young*, 207 Ark. 36, 178 S.W.2d 994 (1944); *Birnstill v. Birnstill*, 218 Ark. 130, 234 S.W.2d 757 (1950); *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).

#### —Military Service.

A soldier stationed in this state must have a residence in the state, apart from the military service, for a period of two months before filing a suit for divorce. *Kennedy v. Kennedy*, 205 Ark. 650, 169 S.W.2d 876 (1943).

Constitutional provision that no soldier, sailor or marine shall acquire residence by reason of being stationed on duty in the state, means that he may not acquire residence from mere fact of being stationed in the state, but, apart from that service, he must have a residence in the state for a period of two months before filing a suit for divorce. *Mohr v. Mohr*, 206 Ark. 1094, 178 S.W.2d 502 (1944).

Army officer held not to have established a residence in Arkansas. *Mohr v. Mohr*, 206 Ark. 1094, 178 S.W.2d 502 (1944).

#### Time of Cause.

Action for divorce may be maintained more than five years after desertion by offending party since desertion is continuing in its nature. *Poe v. Poe*, 125 Ark. 391, 188 S.W. 1190 (1916).

Evidence was sufficient to show that cause of divorce occurred up to and after the separation which took place one month before suit for divorce. *James v. James*, 211 Ark. 531, 201 S.W.2d 14 (1947).

Evidence as to occurrences prior to five years before commencement of suit was admissible where its purpose was to show who was the injured party under the three year separation statute (now 18 months separation). *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781 (1957).

Cause of divorce occurring five years prior to the filing of defendant's complaint



for divorce did not make the granting of a divorce to plaintiff erroneous where there was evidence of other causes. *Alston v. Alston*, 242 Ark. 804, 415 S.W.2d 578 (1967).

**Cited:** *Hensley v. Hensley*, 213 Ark.

755, 212 S.W.2d 551 (1948); *Peugh v. Oliger*, 233 Ark. 281, 345 S.W.2d 610 (1961); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229, (Ct. App. 1979); *Stewart v. Stewart*, 16 Ark. App. 164, 698 S.W.2d 516 (1985).

### 9-12-308. Effect of collusion, consent, or equal guilt of parties.

If it appears to the court that the adultery or other offense complained of has been occasioned by the collusion of the parties or done with an intent to procure a divorce, that the complainant was consenting thereto, or that both parties have been guilty of the adultery or other offense or injury complained of in the complaint, then no divorce shall be granted or decreed.

**History.** Rev. Stat., ch. 51, § 8; C. & M. Dig., § 3507; Pope's Dig., § 4389; A.S.A. 1947, § 34-1209.

**Cross References.** Condonation abolished, see § 9-12-325.

## CASE NOTES

### ANALYSIS

Collusion.  
Condonation.  
Fault of Parties.

#### Collusion.

Where both parties are guilty of collusion and fraud on the court, both parties are precluded from relief of any kind connected with a divorce decree. *Oberstein v. Oberstein*, 217 Ark. 80, 228 S.W.2d 615 (1950).

#### Condonation.

Renewal of matrimonial intercourse after the ground for divorce is a condonation of the ground. *Reed v. Reed*, 62 Ark. 611, 37 S.W. 230 (1896); *Shirey v. Shirey*, 87 Ark. 175, 112 S.W. 369 (1908).

Evidence insufficient to find a condonation of desertion. *Alexander v. Alexander*, 94 Ark. 438, 127 S.W. 740 (1910).

Evidence sufficient to find condonation. *Phillips v. Phillips*, 102 Ark. 679, 144 S.W. 914 (1912).

#### Fault of Parties.

No relief will be afforded to either party if the testimony discloses that they are equally in fault. *Cate v. Cate*, 53 Ark. 484, 14 S.W. 675 (1890); *McCollum v. McCollum*, 227 Ark. 735, 301 S.W.2d 565 (1957).

The court has discretion in an action wherein both parties ask for absolute divorce to grant a divorce from bed and board to the party least at fault, although neither party is entirely blameless. *Crews v. Crews*, 68 Ark. 158, 56 S.W. 778 (1900).

Husband was not entitled to divorce for cause alleged in complaint where he was guilty of adultery. *Evans v. Evans*, 219 Ark. 325, 241 S.W.2d 713 (1951).

Since it appeared to the court that both parties seeking a divorce were guilty of adultery, the decree granting a divorce must be reversed. *Moore v. Moore*, 230 Ark. 213, 322 S.W.2d 77 (1959).

**Cited:** *In re Thomas*, 331 B.R. 798 (Bankr. W.D. Ark. 2005).

### 9-12-309. Maintenance and attorney's fees — Interest.

(a)(1) During the pendency of an action for divorce, whether absolute or from bed and board, separate maintenance, or alimony, the court may:

- (A)(i) Allow to the wife or to the husband maintenance;
- (ii) Allow a reasonable fee for her or his attorneys; and



(iii) Allow expert witness fees; and

(B) Enforce the payment of the allowance by orders and executions and proceedings as in cases of contempt.

(2) In the final decree of an action for absolute divorce, the court may award the wife or husband costs of court, a reasonable attorney's fee, and expert witness fees.

(3) The court may immediately reduce the sums so ordered to judgment and allow the party to execute upon the marital property for the payment of the allowance, except that the homestead shall not be executed upon for the payment of the sums so ordered.

(b) The court may allow either party additional attorney's fees for the enforcement of alimony, maintenance, and support provided for in the decree.

(c) All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum.

(d) The court shall award a minimum of ten percent (10%) of the support amount due as attorney's fees in actions for the enforcement of payment of alimony, maintenance, and support provided for in the decree, judgment, or order.

(e) Collection of interest and attorney's fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

**History.** Civil Code, § 460; C. & M. Dig., § 3506; Pope's Dig., § 4388; Acts 1941, No. 25, § 1; 1945, No. 274, § 1; 1979, No. 705, § 2; 1983, No. 161, § 1; A.S.A. 1947, § 34-1210; Acts 1987, No. 813, § 1; 2001, No. 207, § 1.

## RESEARCH REFERENCES

**Ark. L. Rev.** Insanity Procedure in Cases of Contempt for Default in Family Support Payments, 5 Ark. L. Rev. 361.

Taxability of Attorneys' Fees as Costs, 9 Ark. L. Rev. 70.

Support-Alimony, Suit Money and Property Settlement, 14 Ark. L. Rev. 61.

Note, A Secured Party's Right to Recover Attorney's Fees and Expenses: *Svestka v. First National Bank in Stuttgart*, 35 Ark. L. Rev. 579.

**U. Ark. Little Rock L.J.** Hawthorne, Note: Family Law — Divorce — Constitutionality of Arkansas Property Settlement and Alimony Statutes, 2 U. Ark. Little Rock L.J. 123.

Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Note, Constitutional Law — Equal Protection — Arkansas' Gender-Based Stat-

utes on Dower, Election, Statutory Allowances, and Homestead Are Unconstitutional, *Hess v. Wims*, 272 Ark. 43, 613 S.W.2d 85 (1981); *Stokes v. Stokes*, 271 Ark. 300, 613 S.W.2d 372, 18 A.L.R.4th 903 (1981), 4 U. Ark. Little Rock L.J. 361.

Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

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Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

## CASE NOTES

## ANALYSIS

Constitutionality.

In General.

Applicability.

Amount of Allowance.

Appeal.

Attorney's Fees.

Child Custody Proceedings.

Discretion of Court.

Enforcement.

Marital Property.

Minors.

Modification.

Setting Aside.

Showing of Merit.

**Note.** — Many of the following cases were decided prior to the 1979 amendment to this section which made maintenance, etc., available to the husband as well as the wife in divorce proceedings.

**Constitutionality.**

A husband's liability for the attorney's fee of his wife in a divorce suit is statutory and not a debt by contract within Ark. Const., Art. 9, § 1, exempting personalty of an unmarried person as against debts by contract. *Walker v. Walker*, 148 Ark. 170, 229 S.W. 11 (1921).

Where this section (prior to its 1979 amendment) granted rights to temporary alimony, maintenance and attorney fees only to wives and not to husbands, this section contained a gender-based classification which, as compared to a gender-neutral one, generated additional benefits only for those it had no reason to prefer, and therefore, this section was unconstitutional as a violation of the equal protection clauses of the United States and Arkansas Constitutions. *Hatcher v. Hatcher*, 265 Ark. 681, 580 S.W.2d 475 (1979) (decision prior to 1979 amendment).

**In General.**

In a suit for divorce, a chancellor has power to award alimony pendente lite to the wife; in the absence of any proof of separate property in the wife, it is just and reasonable to compel the husband to furnish the means for her to prosecute or defend the suit and with necessities suit-

able to her station in society and his means. *Glenn v. Glenn*, 44 Ark. 46 (1884).

A husband may not defeat his wife's right to support during the pendency of her divorce action by offering to return to the home and support her. *Womack v. Womack*, 247 Ark. 1130, 449 S.W.2d 399 (1970).

Trial court properly considered the factors to be used in determining an award of alimony and properly found that the ex-wife was entitled to a lifetime award where (1) she remained at home throughout the majority of her 25-year marriage; (2) she had not worked for the past 20 years, ever since the parties' child was born; (3) her only employment experience came from jobs paying at or slightly more than minimum wage; (4) she did not have a college degree and she did not think she had the skills to return to college at her age; and (5) the husband had the ability to pay the alimony award. *Hiett v. Hiatt*, 86 Ark. App. 31, 158 S.W.3d 720 (2004).

Sufficient evidence supported the trial judge's findings that the relationship between the wife and her boyfriend was not one of sharing economic responsibility, and that he was neither a member of her household nor a member of her family; the boyfriend and wife had no joint bank accounts, credit cards, or other financial holdings, obligations, or ties, and whether or not they were romantically involved was not determinative of whether termination of alimony was appropriate. *Gibson v. Gibson*, 87 Ark. App. 62, 185 S.W.3d 122 (2004).

Increase in alimony to wife was proper as wife proved a material change in circumstances; her diagnosis of rheumatoid arthritis affected her ability to supplement her income as she had done in the past by being a massage therapist and limited her potential employment in other fields. *Weeks v. Wilson*, 95 Ark. App. 88, 234 S.W.3d 333 (2006).

**Applicability.**

Where a petition is filed to set aside a default decree obtained on constructive service alleging that the decree was procured by fraud, the court may allow the defendant temporary alimony and attorney's fees. *Stewart v. Stewart*, 101 Ark. 86, 141 S.W. 193 (1911).



An action to vacate a divorce decree is not governed by this section. *Floyd v. Isbell*, 211 Ark. 631, 201 S.W.2d 755 (1947).

Acts 1979, No. 705, which amended this section to make it gender-neutral, could not be retroactively applied absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

### **Amount of Allowance.**

A court of chancery in estimating the allowance to be made the wife, pendente lite, on a bill for divorce, will take into consideration her expenses to be incurred during the progress of the suit; where an allowance has been made for her, it will be presumed that her counsel's fee was considered in fixing the amount. *Bauman v. Bauman*, 18 Ark. 320 (1857).

In a separate maintenance suit award for support of wife as temporary allowance was reduced. *McGuire v. McGuire*, 231 Ark. 613, 331 S.W.2d 257 (1960).

Trial court did not abuse its discretion in refusing to allow plaintiff more money for alimony and attorney's fees pending further litigation since the allowances made were only temporary and there was no way of knowing pending a full and final hearing the needs of plaintiff or the financial status of defendant. *Yohe v. Yohe*, 238 Ark. 642, 383 S.W.2d 665 (1964).

Attorney's fees of \$8,000 awarded in child custody modification action under the authority of subsection (a) of this section. *Jones v. Jones*, 327 Ark. 195, 938 S.W.2d 228 (1997).

In a divorce case, the trial court did not err by ordering former husband to pay former wife \$100 per month in alimony because the evidence showed that he had the ability to pay, he was not responsible for child support after the child's graduation from high school, and the child's college expenses were not considered; moreover, husband's arguments concerning wife's decision to move and her accountability for her financial situation were rejected. *Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006).

Trial court abused its discretion in ordering husband to pay wife alimony in the amount of \$250 per week for six months

from the date of the divorce decree where the wife's needs far outweighed the husband's ability to provide alimony for six months; the wife, who was unemployed but seeking employment, had no assets, other than those awarded by the trial court, upon which to rely for support. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

In a divorce action, an alimony award to a former wife was proper when the wife chose to home-school two minor children, was a stay at home mother under an agreement between the parties, and had no marketable skills or meaningful employment history. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007).

### **Appeal.**

An appeal from an order for ad interim alimony may be taken immediately. *Casteel v. Casteel*, 38 Ark. 477 (1882).

A decree for alimony pendente lite is a final decree which is appealable. *Glenn v. Glenn*, 44 Ark. 46 (1884).

As incident to its appellate jurisdiction, the Supreme Court has power pending an appeal in a divorce suit to make an order allowing a wife costs and suit money. *In re Smith*, 183 Ark. 1025, 39 S.W.2d 703 (1931).

Husband in appeal from divorce action has no standing to raise any question about the constitutionality of allowing alimony and attorney's fees where no allowance was made. *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977).

### **Attorney's Fees.**

Attorneys' fees allowed. *Stearns v. Stearns*, 211 Ark. 568, 201 S.W.2d 753 (1947); *Cook v. Cook*, 233 Ark. 961, 349 S.W.2d 809 (1961); *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962); *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965); *Grumbles v. Grumbles*, 245 Ark. 77, 431 S.W.2d 241 (1968); *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Attorneys' fees not allowed. *Warren v. Warren*, 215 Ark. 567, 221 S.W.2d 407 (1949).

Order of court requiring plaintiff to deposit a stated sum for attorney's fees and expenses of wife in the defense of action before wife was required to plead was within court's discretion. *Goynes v. Goynes*, 231 Ark. 47, 328 S.W.2d 258 (1959).



Awarding of attorneys' fees was a matter for the sound discretion of the trial court. Where evidence supported it, it was not an abuse of discretion for the trial court to award attorneys' fee. *Goodloe v. Goodloe*, 253 Ark. 550, 487 S.W.2d 593 (1972).

Attorneys' fees were not awarded under this section as a matter of right, the granting or denial of the fees being within the sound discretion of the chancellor; evidence sufficient to find that chancellor did not abuse his discretion in refusing to award fees. *Ryan v. Baxter*, 253 Ark. 821, 489 S.W.2d 241 (1973).

During the pendency of an action for an absolute divorce or a limited one, the chancery court has the authority to allow attorney's fees to either spouse upon a showing of circumstances warranting it. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Chancellor had authority under this section to grant attorney's fees to either party where the circumstances warranted the relief; wife's amendment to her complaint eliminating her prayer for divorce did not deprive the court of its authority with respect to attorney's fees on the husband's pending cross-complaint for divorce. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Disparity of the parties' respective incomes, while relevant, cannot alone justify an award of attorneys' fees. *Scroggins v. Scroggins*, 302 Ark. 362, 790 S.W.2d 157 (1990).

The chancellor did not abuse his discretion by declining to award wife attorney's fees and costs, despite her claim of disparity in the parties' incomes and ability to pay these amounts. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

The chancellor abused her discretion in awarding attorney's fees to a wife where (1) the case involved a marriage of more than 30 years and complex property-division issues, and the chancellor herself had a crowded docket that complicated timely scheduling of ample hearing time to address all of the property-division issues, (2) the grounds upon which the divorce was granted, 18 months' separation of the parties, did not accrue until just days before the final hearing, and (3) the chancellor awarded each party an equal share of the marital property despite the fact that the husband was retired and was

living on a pension that was less than half of the wife's income. *Jablonski v. Jablonski*, 71 Ark. App. 33, 25 S.W.3d 433 (2000).

Trial court did not abuse its discretion in awarding mother attorney's fees of \$1,000 where father was in contempt of court for making child support payments payable to the minor children rather than to the mother, for failing to make child support payments in a timely fashion, for failing to pay drug and dental expenses, and for failing to furnish mother with the required copies of his W2 and 1099 tax forms. *Martin v. Scharbor*, 95 Ark. App. 52, 233 S.W.3d 689 (2006).

In a domestic relations case, the trial court appropriately granted an ex-wife's motion for attorney's fees pursuant to § 16-22-308 and this section, because her ex-husband, in challenging the attorney's fee award, offered only his own reasoning and the language of the statutes in support of his argument; he cited no legal authority in support of his position, which was a sufficient reason to affirm the trial court's ruling. *Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007).

Given the trial court's great discretion as to the issuance of an attorney's fee award in alimony cases, the trial court properly awarded the wife attorney's fees and expenses under subsection (b) of this section, since the evidence supported the finding that a substantial change in circumstances, particularly the husband's ability to pay and the wife's need, existed to modify the parties' divorce decree to continue and increase the wife's alimony. *Bettis v. Bettis*, 100 Ark. App. 295, 267 S.W.3d 646 (2007).

### **Child Custody Proceedings.**

Where petition for modification of divorce decree relates only to child custody, the allowance of attorney's fees is within the sound judicial discretion of the court. *Finkbeiner v. Finkbeiner*, 226 Ark. 165, 288 S.W.2d 586 (1956).

Where father brought suit against ex-wife for contempt with regard to her actions in violating a custody agreement by secreting their child outside the jurisdiction of the Arkansas Chancery Court, award of attorney's fees incurred in the contempt proceeding, even though such a proceeding is not specifically included in this section is proper, since the chancery

court had the inherent power and jurisdiction to do so in an equity proceeding. *Payne v. White*, 1 Ark. App. 271, 614 S.W.2d 684 (1981).

### **Discretion of Court.**

Grant of alimony, maintenance, attorney's fees, etc., is within sound discretion of trial court and will not be disturbed on appeal absent an abuse of discretion. *Gladfelter v. Gladfelter*, 205 Ark. 1019, 172 S.W.2d 246 (1943); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953); *McGuire v. McGuire*, 231 Ark. 613, 331 S.W.2d 257 (1960); *Johnson v. Johnson*, 240 Ark. 657, 401 S.W.2d 213 (1966).

In a separate maintenance and custody suit in which the wife was unsuccessful, it was within the court's discretion to deny the wife's request for attorney's fees. *Tilley v. Tilley*, 210 Ark. 850, 198 S.W.2d 168 (1946).

Trial court did not abuse its discretion in denying wife's motion for costs, maintenance, and attorney fees where she failed to obey order of court. *Relbstein v. Relbstein*, 220 Ark. 783, 249 S.W.2d 847 (1952).

The questions of the allowance of alimony, attorney's fees and suit money to a wife pending a husband's divorce action are within the sound discretion of the court where commensurate with the husband's ability and duty to pay and the wife's needs, except that it must give a decree for alimony under a properly certified and authenticated copy of a decree of another state. *Kearney v. Kearney*, 224 Ark. 484, 274 S.W.2d 779 (1955).

An award of attorney's fees is within the discretion of the trial court in a divorce case and will not be reversed absent an abuse of discretion. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Order that husband pay wife's attorney's fees in a divorce case upheld where chancellor determined that the husband was in a much better financial position. *Anderson v. Anderson*, 60 Ark. App. 221, 963 S.W.2d 604 (1998).

Trial court's decrease in husband's alimony payments was proper even though husband indicated that the relief was not great enough as, given that the trial court's findings indicated it looked at the wife's needs and the husband's ability to pay, the trial court did not abuse its discretion in reducing the obligation by only

30%. *Valetutti v. Valetutti*, 95 Ark. App. 83, 234 S.W.3d 338 (2006).

### **Enforcement.**

Courts of chancery have jurisdiction to enforce payment of alimony by all means by which courts usually compel obedience, including dismissal of complaint for disobedience to the order. *Casteel v. Casteel*, 38 Ark. 477 (1882).

This section and § 9-12-313 provides adequate remedy for the enforcement of decrees for alimony and maintenance. *East v. East*, 148 Ark. 143, 229 S.W. 5 (1921).

A final decree granting a divorce supercedes an order for temporary alimony. *Tracy v. Tracy*, 184 Ark. 832, 43 S.W.2d 539 (1931); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953).

Where husband filed notice of appeal from trial judge's order in divorce proceeding and wife filed notice of cross-appeal but neither party filed supersedeas bond, trial court had not lost jurisdiction and could enforce order by contempt proceeding. *Kearney v. Butt*, 224 Ark. 94, 271 S.W.2d 771 (1954).

Husband was not guilty of contempt for refusing to pay monthly payments he had been ordered to pay for maintenance resulting from prior proceedings in which no divorce had been requested after the husband was granted a divorce in proceedings in which the wife was not personally served. *Smith v. Smith*, 236 Ark. 141, 365 S.W.2d 247 (1963).

Trial court was ordered to enforce the original alimony award of \$350 per month for 12 months, plus a \$5,000 lump sum, because the original chancellor had the authority to enforce that alimony award; those sums accrued prior to the entry of the decree in the instant case and were therefore not subject to modification. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

### **Marital Property.**

Where trial court had entered a temporary order pursuant to this section, and that order did not deal with or affect the distribution of the parties' properties, § 9-12-315(b)(3) was not applicable. *Allen v. Allen*, 17 Ark. App. 38, 702 S.W.2d 819 (1986).

Trial court did not purport to divide any future, non-vested employment benefits



pursuant to the divorce decree but, rather, based the award of future alimony on a percentage of the ex-husband's net income, including any bonuses or stock options that the husband received in the future as part of the definition of his net income; thus, it was not error for the trial court to include stock options that might be exercised by the husband in the future as part of his net income for alimony purposes, given that all sources of income had to be considered in determining alimony. *Hiett v. Hiatt*, 86 Ark. App. 31, 158 S.W.3d 720 (2004).

### Minors.

In an action by an infant husband, brought by his guardian and parent to annul a marriage with another infant, a judgment cannot be rendered against the guardian and parent for alimony. *Erwin v. Erwin*, 120 Ark. 581, 180 S.W. 186 (1915).

### Modification.

Modification of alimony was warranted where a wife's income and education level had increased, she was able to afford a nice home and automobiles, she received \$400,000 in assets from the property distribution, and she was only supporting one child. *Parker v. Parker*, 97 Ark. App. 298, 248 S.W.3d 523 (2007).

### Setting Aside.

Where a wife brought suit for divorce, a temporary order allowing her alimony, attorney's fees, and cost money may be set aside at a subsequent term of court. *Poe v. Poe*, 93 Ark. 426, 124 S.W. 1029 (1910).

### Showing of Merit.

In a proceeding for divorce, where the plaintiff applies for alimony pendente lite and an allowance for attorney's fees, she must make some showing of merit by affidavit or otherwise, if the allegations of her complaint are denied by the answer supported by the affidavits of witnesses. *Countz v. Countz*, 30 Ark. 73 (1875).

The wife must make a showing of merit before the court will allow temporary alimony and suit money. *Slocum v. Slocum*, 86 Ark. 469, 111 S.W. 806 (1908).

Cohabitation that occurred during misconduct of spouse and prior to separation of the parties is not an available defense to ad interim allowances under this section. *Brabham v. Brabham*, 240 Ark. 172, 398 S.W.2d 514 (1966).

Trial court did not err in awarding a wife \$1 per year in alimony because she received over \$1 million in assets, with a substantial amount of cash. *Cummings v. Cummings*, 104 Ark. App. 315, — S.W.3d — (2009).

Order awarding a wife alimony in the amount of \$1,500 per month in a divorce action was proper because the trial court considered the proper factors, including the wife's significant health problems impacting her ability to earn an income; the husband's good health; the likelihood that the husband would continue working until retirement age; and the husband's 2007 projected gross earnings. *Jackson v. Jackson*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 289 (Apr. 1, 2009).

Trial court properly denied a wife's request for alimony in a divorce action because there was evidence introduced showing that, while the wife arguably had a need for alimony, the husband's financial situation was not as robust as his salary alone would indicate; the husband still maintained a house payment and car payments for himself and the children while the wife, pursuant to an agreed upon property division, had no debt, no house payment, and no car payment. *Whitworth v. Whitworth*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 571 (May 20, 2009).

**Cited:** *Kuespert v. Roland*, 222 Ark. 153, 257 S.W.2d 562 (1953); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Stokes v. Stokes*, 271 Ark. 300, 613 S.W.2d 372, 18 A.L.R.4th 903 (1981); *Russell v. International Paper Co.*, 2 Ark. App. 355, 621 S.W.2d 867 (1981); *Elkins v. Coulson*, 293 Ark. 539, 739 S.W.2d 675 (1987); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Gavin v. Gavin*, 319 Ark. 270, 890 S.W.2d 592 (1995).

## 9-12-310. Waiting period before rendition of decree.

Unless the parties shall have lived separate and apart from each other for a period of twelve (12) months next before the filing of the



complaint or unless the defendant is constructively summoned by publication of warning order, no decree of absolute divorce or of divorce from bed and board shall be rendered in any action brought on any grounds except bigamy before the thirtieth day following the day upon which the action for divorce is commenced. This prohibition is not subject to waiver by either or both parties to the action for divorce. However, the parties may agree that the case may be submitted in vacation.

**History.** Acts 1953, No. 348, § 1; A.S.A. 1947, § 34-1218.

#### CASE NOTES

**Cited:** Douglas v. Douglas, 227 Ark. 1057, 304 S.W.2d 947 (1957).

#### 9-12-311. Legitimacy of children not affected.

The injured party may apply for a decree of divorce, but no divorce shall affect the legitimacy of the children born previously to entering the decree in the case.

**History.** Rev. Stat., ch. 51, § 2; C. & M. Dig., § 3501; Pope's Dig., § 4382; A.S.A. 1947, § 34-1203.

#### CASE NOTES

**Cited:** Narisi v. Narisi, 233 Ark. 525, 345 S.W.2d 620 (1961); Warren v. Warren, 273 Ark. 528, 623 S.W.2d 813 (1981); Tuck v. Ark. Dep't of Human Servs., 103 Ark. App. 263, 288 S.W.3d 665 (2008).

#### 9-12-312. Alimony — Child support — Bond — Method of payment.

(a)(1) When a decree is entered, the court shall make orders concerning the alimony of the wife or the husband and the care of the children, if there are any, as are reasonable from the circumstances of the parties and the nature of the case. Unless otherwise ordered by the court or agreed to by the parties, the liability for alimony shall automatically cease upon the earlier of:

(A) The date of the remarriage of the person who was awarded the alimony;

(B) The establishment of a relationship that produces a child or children and results in a court order directing another person to pay support to the recipient of alimony, which circumstances shall be considered the equivalent of remarriage; or

(C) The establishment of a relationship that produces a child or children and results in a court order directing the recipient of alimony to provide support of another person who is not a descendant

by birth or adoption of the payor of the alimony, which circumstances shall be considered the equivalent of remarriage.

(2) In determining a reasonable amount of support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

(3) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of the Supreme Court to ensure that the support amounts are appropriate for child support awards. The committee shall also establish the criteria for deviation from use of the chart amount.

(4) The Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish it through per curiam order of the court.

(5)(A) The court may provide for the payment of support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls prior to graduation from high school so long as such support is conditional on the child remaining in school.

(B) The court may also provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent.

(b) In addition to any other remedies available, alimony may be awarded under proper circumstances to either party in fixed installments for a specified period of time subject to the contingencies of the death of either party, the remarriage of the receiving party, or such other contingencies as are set forth in the award, so that the payments qualify as periodic payments within the meaning of the Internal Revenue Code.

(c)(1) When the order provides for payment of money for the support and care of any children, the court, in its discretion, may require the person ordered to make the payments to furnish and file with the clerk of the court a bond or post security or give some other guarantee in such amount and with such sureties as the court shall direct.

(2) The bond, security, or guarantee is to be conditioned on compliance with that part of the order of the court concerning the support and care of the children.

(3) If such action is taken due to a delinquency under the order, proper advance notice to the noncustodial parent shall be given.

(d) All orders requiring payments of money for the support and care of any children shall direct the payments to be made through the registry of the court unless the court in its discretion determines that it would be in the best interest of the parties to direct otherwise. However,



in all cases brought pursuant to Title IV-D of the Social Security Act, the court shall order that all payments be made through the Arkansas child support clearinghouse in accordance with § 9-14-801 et seq.

(e)(1)(A) Except as set forth in subdivision (e)(5) of this section, all orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year.

(B) The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely liquidated.

(2) The clerk, upon direction from the court and as an alternative to collecting the annual fee during the anniversary month each year after entry of the order, may prorate the first fee collected at the time of the first payment of support under the order to the number of months remaining in the calendar year and thereafter collect all fees as provided in this subsection during the month of January of each year.

(3) Payments made for this fee shall be made on an annual basis in the form of a check or money order payable to the clerk of the court or such other legal tender that the clerk may accept. This fee payment shall be separate and apart from the support payment and under no circumstances shall the support payment be reduced to fulfill the payment of this fee.

(4) Upon the nonpayment of the annual fee by the noncustodial parent within ninety (90) days, the clerk may notify the payor under the order of income withholding for child support who shall withhold the fee in addition to any support and remit it to the clerk.

(5) In counties where an annual fee is collected and the court grants at least two thousand five hundred (2,500) divorces each year, the court may require that the initial annual fee be paid by the noncustodial parent or obligated spouse prior to the filing of the order.

(6) All moneys collected by the clerk as a fee as provided in this subsection shall be used by the clerk's office to offset administrative costs as a result of this subchapter. At least twenty percent (20%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated data system for use in administering the requirements of this subchapter. The acquisition and update of software for the automated data system shall be a permitted use of these funds. All fees collected under this subsection shall be paid into the county treasury to the credit of the fund to be known as the "support collection costs fund". Moneys deposited into this fund shall be appropriated and expended for the uses designated in this subdivision (e)(6) by the quorum court at the direction of the clerk of the court.

(f) The clerk of the court shall maintain accurate records of all support orders and payments made under this section and shall post to



individual child support account ledgers maintained in the clerk's office all payments received directly by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and reported to the clerk by the office. The office shall provide the clerk with sufficient information to identify the custodial and noncustodial parents, a docket number, and the amount and date of payment. The clerk shall keep on file the information provided by the office for audit purposes.

(g) The clerk may accept the support payment in any form of cash or commercial paper, including personal check, and may require that the custodial parent or nonobligated spouse be named as payee thereon.

**History.** Rev. Stat., ch. 51, § 9; C. & M. Dig., § 3508; Pope's Dig., § 4390; Acts 1951, No. 56, § 1; 1979, No. 705, § 3; 1981, No. 657, § 1; 1985, No. 989, § 1; 1986 (2nd Ex. Sess.), No. 12, § 1; A.S.A. 1947, § 34-1211; Acts 1987, No. 599, § 1; 1989, No. 100, § 1; 1989, No. 948, § 2; 1989 (3rd Ex. Sess.), No. 54, § 2; 1991, No. 1008, § 2; 1991, No. 1098, § 2; 1991, No. 1102, § 2; 1993, No. 1242, §§ 5, 9; 1995, No. 1184, § 5; 1995, No. 1353, § 1; 1997, No. 208, § 7; 1997, No. 1273, § 1; 1997, No. 1296, § 10; 1999, No. 1514, § 3.

**A.C.R.C. Notes.** Acts 1995, No. 1353, § 2, provided: "The provisions of this act shall apply to payments of alimony due after the effective date hereof."

Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and

the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

**Publisher's Notes.** Acts 1989 (3rd Ex. Sess.), No. 54, § 2 is also codified as § 9-10-109.

As to jurisdiction of circuit court over certain proceedings, see § 9-27-306.

Acts 1995, No. 1353 became effective without the Governor's signature.

**U.S. Code.** The Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 1 et seq.

Title IV-D, referred to in this section, is a reference to Title IV-D of the Social Security Act, and is codified as 42 U.S.C. § 651 et seq.

**Cross References.** As to child support enforcement guidelines, see the Appendix at the end of this title.

Failure to support, defense of insanity, § 9-14-104.

Support and maintenance of children; implied consent to jurisdiction, § 9-14-101.

Uniform Interstate Family Support Act, § 9-17-101 et seq.

## RESEARCH REFERENCES

**A.L.R.** Propriety of equalizing income of spouses through alimony awards. 102 A.L.R.5th 395.

Spouse's professional degree or license as marital property for purposes of alimony, support, or property settlement. 3 A.L.R.6th 447.

**Ark. L. Notes.** Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

**Ark. L. Rev.** Bond for Child Support, 5 Ark. L. Rev. 360.

Divorce and Property Awards, 7 Ark. L. Rev. 367.

Notes, *Towery v. Towery*: Has the "Flexible" Child Support Rule Lost Its Stretch?, 39 Ark. L. Rev. 539.

**U. Ark. Little Rock L.J.** Note: Duty of Continued Child Support Past the Age of Majority, 1 U. Ark. Little Rock L.J. 397.

Hawthorne, Note: Family Law — Divorce — Constitutionality of Arkansas

Property Settlement and Alimony Statutes, 2 U. Ark. Little Rock L.J. 123.

Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

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Legislative Survey — Family Law, 8 U. Ark. Little Rock L.J. 577.

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Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

Survey — Family Law, 13 U. Ark. Little Rock L.J. 369.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 371.

## CASE NOTES

### ANALYSIS

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**Note.** — Many of the following cases were decided prior to the 1979 amendment to this section which made the statute gender-neutral.

### Constitutionality.

Prior to the 1979 amendment, this section was undisputedly gender-based and therefore unconstitutional as violative of equal protection rights. This section, as amended by Acts 1979, No. 705 is gender-

neutral rather than gender-based and therefore is constitutional. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Unconstitutionality of this section as it existed prior to 1979 amendment did not affect the validity of alimony awarded prior to declaration of unconstitutionality since the wife's rights to alimony were vested by the decree of the court and not by the statute. *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980).

Supreme Court would not consider husband's challenge to constitutionality where the challenge was made two years after the original divorce decree because he waited too long to assert it, even though this section had since been declared unconstitutional because of its gender-based classification. *Schmidt v. Schmidt*, 268 Ark. 382, 596 S.W.2d 690 (1980).

This section, which permits a court to require child support past majority while the child remains a high school student, is not unconstitutional. *McFarland v. McFarland*, 318 Ark. 446, 885 S.W.2d 897 (1994).

### In General.

This section was not repealed by § 9-12-315. *Williams v. Williams*, 150 Ark. 319, 234 S.W. 169 (1921).

Although wife did not plead her claim for alimony properly, where it was apparent on the record that throughout the proceeding the parties litigated the case with the full knowledge of wife's desire for alimony, the court erred in granting husband's motion to set aside the award of alimony. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

### Construction.

The general assembly intended the right of support for the wife, and children,



to be construed in the same manner. *Brun v. Rembert*, 227 Ark. 241, 297 S.W.2d 940 (1957).

### **Applicability.**

Acts 1979, No. 705, which made this section gender-neutral, could not be retroactively applied absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

When support has been previously set in a decree, a change of circumstances must be found before this section is applicable. *McKiever v. McKiever*, 305 Ark. 321, 808 S.W.2d 328 (1991).

### **Agreement of Parties.**

An agreement by the mother to pay child support to her husband following a divorce was not invalid as being inequitable and contrary to public policy on the grounds that the agreement relieved the father of his obligation to support his children since the obligation belonged to both parents. *Barnhard v. Barnhard*, 252 Ark. 167, 477 S.W.2d 845 (1972).

Power of a court to modify a decree for the support of minor children cannot be defeated by an agreement between the parties, even if incorporated in the decree. *Williams v. Williams*, 253 Ark. 842, 489 S.W.2d 774 (1973).

Where the final decree of divorce found that the parties had agreed that one-third of the personal property and crops amounted to a certain sum and an order was entered awarding that amount to the wife, the husband had no grounds to complain that the division of personal property was not exactly one-third. *Wilson v. Wilson*, 270 Ark. 485, 606 S.W.2d 56 (1980).

The trial court was not bound by the property settlement agreement as to alimony because the court has the authority to make an initial award of alimony when a divorce decree is entered. *Womack v. Womack*, 16 Ark. App. 108, 697 S.W.2d 930 (1985).

Prior to 1987, agreements between former spouses reducing the amount of child support payments did not bind the court, but the court could recognize such an agreement (1) if the agreement was

supported by a valid consideration, or (2) if it were inequitable to do otherwise, thus where the mother gave up the right to 32% of the father's income as previously ordered but gained an increase in the fixed amount of support from \$200.00 to \$250.00 per month over a period of time there was valid consideration and the chancellor did not err in recognizing the agreement as to the amount of arrearages due before the 1987 amendment to § 9-12-314. *Sullivan v. Edens*, 304 Ark. 133, 801 S.W.2d 32 (1990), superseded by statute as stated in, *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992), superseded by statute as stated in, *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

### **Alimony.**

#### **—In General.**

The amount of support must always depend upon the particular facts in each case, such as husband's earnings and ability to pay as well as the needs of the wife. *Dean v. Dean*, 222 Ark. 219, 258 S.W.2d 54 (1953).

Where property awards were sufficient wife was not entitled to alimony. *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957).

Fact that wife has more income than husband does not, within itself, preclude her right of recovery, though the fact that a wife has more income than the husband may be taken into consideration in making an award. *White v. White*, 228 Ark. 732, 310 S.W.2d 216 (1958).

Chancery courts have the power to grant the wife, as a part of her alimony, an interest in her husband's real property where he secures the divorce. *Cook v. Cook*, 233 Ark. 961, 349 S.W.2d 809 (1961).

When awarding alimony, the chancellor should give proper consideration to (1) the financial condition of the parties such as the husband's ability to pay, the wife's financial needs, and the wife's ability to support herself; (2) the station in life of the parties, that is, the manner and style of living to which the wife has become accustomed; and (3) the character of the parties bearing on the cause of the separation. *Sutton v. Sutton*, 266 Ark. 451, 587 S.W.2d 67 (1979).

A decree for alimony is binding and conclusive on the parties as to the amount



of alimony and as to all conditions or facts existing when it was rendered. *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980).

Section 9-12-301 allows independent proceeding for the division of marital property or alimony when neither the division nor alimony could have been considered in the divorce action. *Woods v. Woods*, 285 Ark. 175, 686 S.W.2d 387 (1985).

If either spouse is entitled to alimony, the chancellor must comply with this section by making that decision when the decree is entered. If circumstances prevent the spouse who is to pay the alimony from being able to do so, then the court may recite that fact and decline to award a specific amount; thereafter, if circumstances change in a way that will permit the payment of alimony, the party who has been determined to be entitled to it may petition the court. *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988).

Where chancellor's order said alimony award was not a distribution of marital property or given in lieu of such a distribution, but it then referred to the discrepancy in income which would result from the difference in profit potential between two properties, reversal of the award gave the chancellor appropriate flexibility in reconsidering the distribution of marital property, if he chose to do so, rather than readopt the unequal distribution with an explanation as § 9-12-315 requires. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988).

The ability of a party to pay and the need of the other party are primary factors to be considered in awarding alimony. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Chancellor abused his discretion in failing to award husband alimony, where marriage was of long duration, husband was unemployed, without independent financial means, in declining health and ordered to sell farm he had been operating, and wife had a secure job, was beneficiary of a trust fund, retained the main instrumentality enabling her to earn her livelihood and in better health than husband. *Mearns v. Mearns*, 58 Ark. App. 42, 946 S.W.2d 188 (1997).

The statute is not determinative with regard to the termination of alimony provided for in an incorporated agreement.

*Rockefeller v. Rockefeller*, 335 Ark. 145, 980 S.W.2d 255 (1998).

### **Appeal.**

Husband in appeal from divorce action has no standing to raise any question about the constitutionality of allowing alimony and attorney's fees where no allowance was made. *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977).

Appellant had standing to challenge the constitutionality of this section where he was financially obligated to his wife under decree rendered pursuant to this statute. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Indebtedness which spouse was required to pay as maintenance and support not dischargeable under 11 U.S.C. § 35(a)(7) in bankruptcy. *Barker v. Barker*, 271 Ark. 956, 611 S.W.2d 787 (1981).

### **Bond.**

There is no language in this section which authorizes the seizure of one's property without limitation under the guise of a bond; accordingly, one spouse in a divorce action was not entitled to have all of the other spouse's property impounded as a bond under this section, particularly where the second spouse had never been ordered nor attempted to make a bond. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (supplemental opinion).

### **Child Support.**

Circuit court did not clearly err in finding that the husband's income for child-support purposes was that reflected on his tax returns; it was clear that the husband's ownership in the limited partnership was a significant portion of his net worth; thus, that ownership interest would be a proper consideration. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008).

Court abused its discretion in failing to order parents to pay child support to a grandmother who was awarded custody of their child at the time their divorce was granted, as required by subdivision (a)(1) of this section, where the court had ample evidence of the mother's income and evidence that the father was on active duty in the U.S. Army National Guard. *Bass v. Weaver*, 101 Ark. App. 367, 278 S.W.3d 127 (2008).

**—In General.**

Where chancery court did not pass on the question of support of the children, but merely denied the wife alimony, children are not barred from bringing suit against their father, and whether they would recover or not would depend upon all the facts and circumstances. *Upchurch v. Upchurch*, 196 Ark. 324, 117 S.W.2d 339 (1938).

It is duty of father to support minor child even though custody is awarded to mother, and misconduct of mother cannot be allowed to prejudice the child's right to support. *Reiter v. Reiter*, 225 Ark. 157, 278 S.W.2d 644 (1955).

Order for the payment of allowances for child support is not a final decree upon which an execution may be issued, or which might become a lien on real estate. *Brun v. Rembert*, 227 Ark. 241, 297 S.W.2d 940 (1957).

Action to recover delinquent child support payments was not timely where instituted more than five years after the last payment became due. *Brun v. Rembert*, 227 Ark. 241, 297 S.W.2d 940 (1957).

A mother's obligations to her child for support do not come into existence only when the father is impoverished. *Barnhard v. Barnhard*, 252 Ark. 167, 477 S.W.2d 845 (1972).

The power of a chancery court to order child support payments under this section does not create in the court an implied authority to impose a lien on the other spouse's property for future child support, and equity courts have no inherent authority to grant one. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (supplemental opinion).

To declare that *Perkins v. Perkins*, 15 Ark. App. 82, 690 S.W.2d 356 (1985), or this section effectively eliminates the necessity of the need for equity or a chancellor in child support cases is utterly without foundation. *Borden v. Borden*, 20 Ark. App. 52, 724 S.W.2d 181 (1987).

While there is no specific provision identifying "earning capacity" as an element to be considered when ordering child support, it is nevertheless recognized as a factor. In determining the amount to be contributed for child support, the chancellor should consider the needs of the children, the resources of each parent, their respective ages, earning capacities, incomes and indebtedness, state of health,

future prospects, and any other factors that will aid the court in reaching a just and equitable result. *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988).

Where custodial parent did not interfere with former spouse's visitation rights, nor defy the divorce decree, but did delay in pursuing her rights to obtain judgment for the accrued child support payments, delay did not defeat right to accrued child support. *Cunningham v. Cunningham*, 297 Ark. 377, 761 S.W.2d 941 (1988).

The list of factors set out by the Supreme Court for determining whether an amount specified by the chart is unjust or inappropriate, is not exclusive. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

The language "other income or assets available to support the child from whatever source" is intended to expand, not restrict, the sources of funds to be considered in setting child support. *Belue v. Belue*, 38 Ark. App. 81, 828 S.W.2d 855 (1992).

The chancellor correctly based the amount of child support ordered on a monthly income which included noncustodial Veterans' Administration disability benefits. *Belue v. Belue*, 38 Ark. App. 81, 828 S.W.2d 855 (1992).

In a divorce action, a trial court did not err when it relied on a former husband's total net income and averaged the husband's salary to determine income for child support payments, which were presumptively proper under the guidelines and family support chart of subdivision (a)(2) of this section and Ark. Sup. Ct. Admin. Order No. 10. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007).

**—Beyond Eighteenth Birthday.**

Even after a handicapped child reaches age 18, a parent should provide further support for educational purposes to prepare the child to pay his medical bills, and support himself if the financial condition of the parent allows. *Elkins v. Elkins*, 262 Ark. 63, 553 S.W.2d 34 (1977).

Subdivision (a)(5)(A) of this section gave the chancellor the authority to direct noncustodial parent to continue making payments on the custodial parent's house until the parties' child graduated from high school. *Keesee v. Keesee*, 48 Ark. App. 113, 891 S.W.2d 70 (1995).



**—Chart.**

Courts are required to refer to chart but are not bound to set support payments in accordance with exact terms thereof; degree of dependence upon chart is left to sound discretion of the chancellor. *Thurston v. Pinkstaff*, 292 Ark. 385, 730 S.W.2d 239 (1987).

The Family Support Chart is to be used as a guide and is not intended to be binding. *Borden v. Borden*, 20 Ark. App. 52, 724 S.W.2d 181 (1987).

Award of support based upon Family Support Chart was not abuse of discretion. *Borden v. Borden*, 20 Ark. App. 52, 724 S.W.2d 181 (1987); *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Although the chancellor was not required to use the family support chart in setting child support the fact that his order of support was in conformity with the chart indicated that it was not erroneous. *Freeman v. Freeman*, 29 Ark. App. 137, 778 S.W.2d 222 (1989) (preceding decisions prior to 1989 amendment by No. 948).

Where chancellor made specific findings on the record spelling out why the support chart was inappropriate, considering all relevant factors, it was sufficient to rebut the presumption that the amount of child support calculated pursuant to the family support chart was correct. *Scroggins v. Scroggins*, 302 Ark. 362, 790 S.W.2d 157 (1990).

Reference to the Family Support Chart is mandatory, and the chart itself establishes a rebuttable presumption of the appropriate amount which can only be explained away by written findings stating why the chart amount is unjust or inappropriate. *Black v. Black*, 306 Ark. 209, 812 S.W.2d 480 (1991).

Where the chancellor's order failed to indicate whether he indeed referred to the chart in making his decision, he projected a support chart amount premised on the defendant's monthly income, and he presumed that amount to be correct, the case was remanded for the chart to be considered. *Black v. Black*, 306 Ark. 209, 812 S.W.2d 480 (1991).

While there is a rebuttable presumption that the amount of support according to the chart is correct, the chancellor in his discretion is not entirely precluded from adjusting the amount as deemed warranted under the facts of a particular case.

However, when deviating from the chart, the chancellor must explain his or her reasoning by the entry of a written finding or by making a specific finding on the record. *Waldon v. Waldon*, 34 Ark. App. 118, 806 S.W.2d 387 (1991).

Where the end result reached by the chancellor represented only a slight deviation from the chart amount, the findings made by the chancellor on the record were sufficient to rebut the presumption that the amount of support according to the chart was correct. *Waldon v. Waldon*, 34 Ark. App. 118, 806 S.W.2d 387 (1991).

The child support chart and the criteria used for deviating from it are not mandatory, but there is a rebuttable presumption that the amount specified in the chart is the appropriate amount; applying the specific chart amounts is not mandatory if it would be unjust or inequitable, and if written findings are made to that effect. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

The child support chart specifically takes into account payments made under court order to support other children, and allows these payments to be deducted from weekly take home pay. The chart does not refer to support of children not under court order, but a payor spouse's ability to pay can be considered, and necessarily includes other children the parent is legally obligated to support. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

Given the presumption that the chart amount is reasonable, it is incumbent on the trial courts to give a fuller explanation of their reasons for rejecting the chart; it was not sufficient to state merely that the amount was "unreasonable." *Cochran v. Cochran*, 309 Ark. 604, 832 S.W.2d 252 (1992).

Where there was no evidence regarding defendant's weekly take home pay during the relevant time period, the support was set at the minimum level required of an unemployed person. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Where the chancellor found that the chart called for \$51.00 per week child support, which would quadruple the non-custodial parent's payments, and considering his expenses, would be devastating to increase by four times the amount of his support payments, an increase of the weekly payment to \$30.00 instead of



\$51.00 followed the requirements, and applied the rules set out in the Supreme Court's per curiams by avoiding a modification that would work undue hardship on that party. *Howard v. Wisemon*, 38 Ark. App. 27, 826 S.W.2d 314 (1992).

Reference to the child support chart is mandatory. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The child support chart itself establishes a rebuttable presumption of the appropriate amount which can only be explained away by written findings stating why the chart amount is unjust or inappropriate. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The presumption that the child support chart correctly estimates support may be overcome if the chancellor determines, upon consideration of all the relevant factors, that the chart amount is unjust or inappropriate; the relevant factors include food, shelter, utilities, clothing, medical and education expenses, accustomed standard of living, insurance, and transportation expenses. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The family support chart is structured so that the amount of support per child decreases in proportion to the number of added dependents. *Arkansas Dep't of Human Servs. Child Support Enforcement Unit v. Forte*, 46 Ark. App. 115, 877 S.W.2d 949 (1994).

Chancellor erroneously applied father's income figure of \$270.00 to the chart under the column for three dependents, which showed support of \$101.00, and then divided that figure by three, to arrive at support of \$35.00 for the one child before the court; the chart should be applied to the child that is before the court, and it was improper for the chancellor to have applied the chart based on three dependents and then divide that amount by three. *Arkansas Dep't of Human Servs. Child Support Enforcement Unit v. Forte*, 46 Ark. App. 115, 877 S.W.2d 949 (1994).

Reference to the family support chart is mandatory, and the chart itself establishes a rebuttable presumption of the appropriate amount which can only be explained away by express findings stating why the chart amount is unjust or inappropriate. *McJunkins v. Lemons*, 52 Ark. App. 1, 913 S.W.2d 306 (1996).

Where the chancellor failed to make any reference to the family chart in his com-

ments or the order, the chancellor failed to comply with subdivision (a)(2) of this section and the award was improper. *McJunkins v. Lemons*, 52 Ark. App. 1, 913 S.W.2d 306 (1996).

Given the evidence of the father's affluence, exceptional generosity to his girlfriend and sisters, and extravagant lifestyle, the trial judge did not abuse his discretion in setting child support in the divorce proceeding in accordance with the presumptive amount derived from the family support chart. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Father was properly ordered to pay a percentage of his salary as child support, pursuant to the child support guidelines, where his income exceeded the amount of income shown on the family support chart as the child was entitled to a lifestyle similar to that of his father's and said monies were going toward the child's college education; thus, the trial court did not abuse its discretion in not deviating from the family-support guidelines and in not ordering father to pay less than 15 percent of his monthly income in child support. *Ceola v. Burnham*, 84 Ark. App. 269, 139 S.W.3d 150 (2003).

#### —Custody.

If the divorce decree grants the custody of a minor child to the mother but makes no provision for the child's support and the mother thereafter supports the child and supplies it with necessities, the father, if financially able, should repay the mother for the reasonable value of the support or necessities thus furnished. *Wilder v. Garner*, 235 Ark. 400, 360 S.W.2d 192 (1962).

Where parents have physical custody of one child each, the court should determine whether each parent should pay child support for the other child and, if not, should make specific findings as provided by subdivision (a)(2) of this section. *Lonigro v. Lonigro*, 55 Ark. App. 253, 935 S.W.2d 284 (1996).

#### —Deviation from Chart.

Given the presumption in subdivision (a)(2) that the chart amount is reasonable, it is incumbent on the chancellor to give a full explanation of his reasons for rejecting the chart. *Roland v. Roland*, 43 Ark. App. 60, 859 S.W.2d 654 (1993).

The chancellor did not abuse his discretion in considering father's other two illegitimate children as justification for deviating from the child support chart, even though father was not under a court order to support those children. *Arkansas Dep't of Human Servs. Child Support Enforcement Unit v. Forte*, 46 Ark. App. 115, 877 S.W.2d 949 (1994).

Where chancellor awarded the noncustodial parent the right to claim the children as dependents for income tax purposes, the chancellor essentially deviated from the child support chart without providing the required written findings. *Fontenot v. Fontenot*, 49 Ark. App. 106, 898 S.W.2d 55 (1995).

Chancellor's deviation from family child support chart without making appropriate findings of fact did not relieve parent of his support obligation, but child-support issue would be remanded to chancery court to reconsider support obligation consistent with subdivision (a)(2) of this section. *Mearns v. Mearns*, 58 Ark. App. 42, 946 S.W.2d 188 (1997).

By omitting that portion of a depreciation deduction which represented spendable income to noncustodial parent without entering a specific finding on the record that it would be unjust or inappropriate to calculate the support based on its inclusion, the chancellor in effect deviated from the child-support chart without making the requisite written findings. *Stepp v. Gray*, 58 Ark. App. 229, 947 S.W.2d 798 (1997).

The chancellor did not commit error in declining to deviate from the presumptively correct support amount where the father asserted that the amount required by the statute exceeded what was a reasonable requirement for child support for a very young child and sought to prove his contention through cross-examination of the wife as to her utility bills, cost of food, and the costs associated with living in her trailer home, as well as those expenses on her affidavit of financial means, which had been prepared before the child was born. *Smith v. Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000).

Trial court properly dismissed client's malpractice action even though the attorney committed malpractice by failing to perfect client's appeal of the trial court's child-support award as the client would not have prevailed on appeal because the

trial court properly adhered to guidelines of Arkansas Family Support Chart when it deviated from presumptive amount; although the trial court was required to consider the guidelines, the court did not have to use the chart amount where the circumstances of the parties indicated another amount would be more appropriate. *Davis v. Bland*, 367 Ark. 210, 238 S.W.3d 924 (2006).

#### **—Discretion of Court.**

A chancellor's finding as to child support will not be disturbed on appeal unless it is shown that the chancellor abused his discretion. *Borden v. Borden*, 20 Ark. App. 52, 724 S.W.2d 181 (1987).

The chancellor, in his discretion, is not entirely precluded from adjusting the amount of child support as deemed warranted under the facts of a particular case. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The amount of child support lies within the sound discretion of the chancellor, and the court will not disturb the chancellor's finding absent an abuse of discretion. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

Chancellor could consider father's income over thirty-one weeks instead of twelve weeks in order to obtain a better perspective of father's earnings to determine child support award. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

#### **—Modification.**

Any increase in the allowance for the support of children must be based upon a showing that conditions have changed since the entry of the decree of divorce. *Haney v. Haney*, 235 Ark. 60, 357 S.W.2d 19 (1962).

Where child support payments pursuant to written order were at variance with those previously announced orally by the chancellor, the chancellor was at liberty to reconsider his first conclusion. *Schaefer v. Schaefer*, 235 Ark. 870, 362 S.W.2d 444 (1962).

Remarriage of the husband was not in itself sufficient change in circumstances to justify a reduction of child support payments. *Pults v. Pults*, 236 Ark. 434, 367 S.W.2d 120 (1963).

Change in custody constitutes a change in circumstances under which a court has



the right to review and modify awards for support of children, increasing or reducing the awards as warranted. *Williams v. Williams*, 253 Ark. 842, 489 S.W.2d 774 (1973).

Trial court always has right to review and modify child support payments in accordance with changing circumstances and may increase or reduce the payments as warranted in each case, but it is error to change amount of support where there is no evidence submitted to show a change in circumstances. Matters which should be considered in determining whether there has been a change in circumstances warranting adjustment in child support include remarriage of the parties, a minor reaching majority, change in the income and financial conditions of the parties, relocation, change of custody, debts of the parties, financial conditions of the parties and families, ability to meet current and future obligations, and child support chart. *Thurston v. Pinkstaff*, 292 Ark. 385, 730 S.W.2d 239 (1987).

It is error to change the amount of child support where there is no evidence submitted to show a change in circumstances. *Ross v. Ross*, 29 Ark. App. 64, 776 S.W.2d 834 (1989).

Chancellor's determination as to whether there are sufficient changed circumstances to warrant an increase in child support is a finding of fact; this finding will not be reversed unless it is clearly erroneous. *Hunt v. Hunt*, 40 Ark. App. 166, 842 S.W.2d 470 (1992).

Because this section and § 9-14-234 specifically provide that any decree which contains a provision for the payment of child support shall be a final judgment until either party moves to modify the order, where father did not file his petition to reduce support until over a year after the decree was entered, the unpaid support accrued as originally ordered, until the motion to modify the judgment was filed. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

Whether provisions regarding child support are in a divorce decree or property settlement contract, the court always retains authority and jurisdiction to modify child support obligations. *Warren v. Kordsmeier*, 56 Ark. App. 52, 938 S.W.2d 237 (1997).

A child-support obligation cannot be modified based solely on the current chart

amount without there also being proof of a change in circumstances, and where the appellant failed to introduce evidence of appellee's income when the order was entered, a change in circumstances could not be shown. *Ritchey v. Frazier*, 57 Ark. App. 92, 940 S.W.2d 892 (1997).

Material change of circumstances occurred when the child's custody changed from the mother to the father and the child began attending a military academy; thus, the trial court was not bound by the one-half division of education expenses it directed in its first order, which contemplated the child attending a different school. *Hyden v. Hyden*, 85 Ark. App. 132, 148 S.W.3d 748 (2004).

Two large judgments received by father constituted "income" under Ark. Sup. Ct. Admin. Order No. 10 and, thus, the trial court did not err by ordering the father to pay a percentage of the judgments as a one-time child support obligation; it was irrelevant to the modification proceeding that the father had agreed to repay discharged bankruptcy debts, and the father's monthly obligation was not increased due to the judgments. *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005).

Father was allowed to claim the youngest child as a dependent and receive a tax exemption where the circuit court determined that the mother had not been employed since the birth of the last child and that the support of \$4,653.00 per month for the child in the mother's custody was more than 50% of the support required to maintain the child in her lifestyle. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006).

In reducing father's child support obligation from \$1000 to \$525 per month, the trial judge specifically noted that the child's accustomed life style was being accommodated and that the father was in fact earning no income whatsoever; the chart amount was not deemed to be unjust or inappropriate based upon the criteria applied to the facts, and the trial court did not err in setting an equitable amount of child support. *McKinney v. McKinney*, 94 Ark. App. 100, 226 S.W.3d 37 (2006).

### **Compliance.**

Reference to the family support chart is mandatory; although a trial court's order did not specifically reference the family



support chart, the appellate court held that the trial judge in his bench ruling referenced the chart by ordering the incarcerated father to pay the minimum amount. *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003).

#### —Discretion of Court.

In divorce action, allowance or disallowance of alimony was in the chancellor's discretion after consideration of all circumstances. *Upchurch v. Upchurch*, 196 Ark. 324, 117 S.W.2d 339 (1938).

Where there was no valid statute in effect at the time to sustain the awarding of alimony, the chancellor, within the exercise of inherent power and sound discretion, could have awarded alimony to the wife or husband as was justified by the facts and circumstances, in order to prevent harsh and inequitable results. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

The award of alimony in a divorce action is not mandatory, but is a question which addresses itself to the sound discretion of the chancellor, and the chancellor's decision will not be disturbed absent a clear abuse of that discretion. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988); *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988); *Busby v. Busby*, 39 Ark. App. 108, 840 S.W.2d 195 (1992).

An award of alimony lies within the discretion of the chancellor and will not be reversed absent an abuse of that discretion. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Where party seeks award of alimony and greater share of marital property, alimony and property settlements are complimentary devices that a chancery court must employ to make the dissolution of a marriage of long standing as equitable as possible. *Mearns v. Mearns*, 58 Ark. App. 42, 946 S.W.2d 188 (1997).

#### —Duration.

The chancellor erred when he ordered that alimony would terminate only upon the death of either party and that alimony would not terminate upon the remarriage of the recipient wife where his stated purpose for such award was to substitute alimony for an interest in the husband's unvested military retirement. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000).

#### —Modification.

When a decree is entered fixing and allowing alimony for the support and maintenance of the wife, that decree limits and defines the extent of the husband's obligation in that respect, but the allowance is always subject to modification by the court to meet the changed situation and conditions of the parties in interest. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

Where spouse ordered to pay alimony has the ability to generate substantial earnings and a past history of doing so, but, at the time of the divorce, is engaged in lesser employment, the trial court need not award a token amount of alimony in the decree in order to reserve to the other spouse the right to petition for a reasonable amount of alimony when the circumstances permit. *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996).

#### —Specified Period of Time.

The chancery court was not wrong in not extending alimony until 56-year-old wife was eligible for social security, rather than just for five years; where the wife had marketable skills, and therefore had the means to support herself, that fact joined with the alimony award and other property given her in the divorce was evidence that the chancery court weighed the relevant circumstances, and acted well within its discretion in awarding alimony "for a specified period of time." *Ducharme v. Ducharme*, 316 Ark. 482, 872 S.W.2d 392 (1994).

#### Disability.

Although the Guidelines for Child Support Enforcement do not specifically address the situation where a disabled parent is required to provide support for an adult handicapped child who also receives disability income in his or her own right, the guidelines do provide that for Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and/or children. *Kimbrell v. Kimbrell*, 47 Ark. App. 56, 884 S.W.2d 268 (1994).

A custodial parent, who is himself disabled, is still obligated by subdivision (a)(5)(B) of this section to support a disabled child. *Kimbrell v. Kimbrell*, 47 Ark. App. 56, 884 S.W.2d 268 (1994).

**Earning Capacity.**

The court may consider the fact that a supporting spouse voluntarily changes employment so as to lessen earning capacity and, in turn, the ability to pay alimony and child support. The court may, in proper circumstances, impute an income to a spouse according to what could be earned by the use of his or her best efforts to gain employment suitable to his or her capabilities. *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988).

As there could be found no Arkansas case holding that prior tax refunds paid months before a divorce hearing must be included in income, there was no error in the chancellor's refusal to include receipt of one-half of an income tax refund in calculating income. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

Award of alimony to the wife was properly denied where the husband was 64 years old and in relatively poor health, unable to do much farm work other than bookkeeping; the wife was 58 years old, in good health, and was currently employed managing an RV park. *Powell v. Powell*, 82 Ark. App. 17, 110 S.W.3d 290 (2003).

In an action to increase husband's child support obligation, the trial court did not err in allowing the husband to claim the tax deduction for the parties' daughter because the trial court performed the required weighing and made the required findings when it stated that the benefit to the husband substantially outweighed the benefit to the wife. *White v. White*, 95 Ark. App. 274, 236 S.W.3d 540 (2006).

**Fault.**

Fault is not a factor in deciding whether to award alimony unless it relates to need or the ability to pay. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Eighty-five-year-old former husband was ordered to pay alimony to his former wife based on evidence that showed he used the wife's salary to fund his extramarital relationships with several women since the diversion of funds related to the wife's need, and the amount awarded was within his ability to pay since he was still employed. *Dykman v. Dykman*, 98 Ark. App. 145, 253 S.W.3d 23 (2007).

**Medical Attention.**

The term "support and maintenance" includes necessary medical attention.

*Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

Evidence sufficient to show that court should have modified decree so as to require husband to pay his wife's doctor, hospital, nursing, and medical bills. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

**Remarriage.**

Remarriage of the divorced wife is sufficient grounds to entitle the husband to a termination of alimony payments upon proper application to the court granting the original decree but the remarriage does not of itself terminate the obligation. *Wear v. Boydstone*, 230 Ark. 580, 324 S.W.2d 337 (1959).

Subsequent judgments on original decree were not void because of remarriage of wife but husband was entitled to proceed for modification of judgments where it did not appear that chancellor was aware of wife's remarriage at the time he allowed the judgments. *Wear v. Boydstone*, 230 Ark. 580, 324 S.W.2d 337 (1959) (preceding decisions prior to 1989 amendment by No. 100).

Subdivision (a)(1) of this section clearly requires that remarriage of the person who is awarded alimony must be specifically mentioned in the divorce decree or alimony agreement if the automatic cessation of liability for alimony is not to occur upon such event. *Smith v. Smith*, 41 Ark. App. 29, 848 S.W.2d 428 (1993).

Former wife's cohabitation with another man could not be viewed as the equivalent to marriage for purposes of determining whether she was entitled to continue receiving alimony payments from the former husband where there was no evidence that the former wife had assumed the man's name, that she held herself out publicly as his wife, or that he had assumed responsibility for her care and maintenance. *Herman v. Herman*, 335 Ark. 36, 977 S.W.2d 209 (1998).

By using the words "unless otherwise ... agreed by the parties," the General Assembly clearly indicated that it is permissible for a divorcing couple to contractually agree to continue alimony even after one of the parties has children with another person and is obligated to pay child support. *Rockefeller v. Rockefeller*, 335 Ark. 145, 980 S.W.2d 255 (1998).

Husband's argument that the wife was not entitled to alimony payments under



subsection (a) of this section because she had remarried was rejected where the payments at issue were properly characterized as periodic distributions of marital property and not alimony. *Surratt v. Surratt*, 85 Ark. App. 267, 148 S.W.3d 761 (2004).

In a domestic relations case, the trial court did not err in refusing to terminate an ex-husband's alimony obligation upon his ex-wife's remarriage pursuant to this section because the parties had contracted for the ex-husband's alimony obligation to continue beyond the ex-wife's remarriage, so the statute's automatic termination provision regarding remarriage was not applicable. *Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007).

### **Res Judicata.**

Where a judgment is based upon rights conferred by a statute later declared unconstitutional, the doctrine of res judicata bars the relitigation of the case in which it was rendered, or the reopening of the judgment after it has become final. *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980).

Where husband waited four years after the divorce decree to argue that this section was violative of the equal protection clause of the Fourteenth Amendment, the husband plainly did not raise nor pursue the constitutional issue with diligence and the matter was res judicata. *Mensch v. Mensch*, 268 Ark. 1022, 597 S.W.2d 859 (Ct. App. 1980) (decision prior to 1979 amendment).

### **Temporary Rehabilitative Alimony.**

An award of temporary rehabilitative alimony, which required the husband to pay for tuition, books, and fees for the wife to attend college for up to five years, was not an abuse of discretion, notwithstanding the wife's assertion that she was the mother of four children, had a full time job, and did not have time to go to school, where the wife was a school teacher and earned only slightly less than the husband, and the husband paid more child support than the support chart indicated, even though he had custody of one of the children. *Myrick v. Myrick*, 339 Ark. 1, 2 S.W.3d 60 (1999).

Trial court's ruling that estate was liable for husband's temporary alimony payments was reversed as, under subsection

(b) of this section, the husband's obligation for the payment of temporary alimony terminated upon his death; however, the estate was liable for the amount the husband was in arrears up to the point of his death. *Estate of Carpenter v. Carpenter*, 93 Ark. App. 441, 220 S.W.3d 263 (2005).

### **Torts.**

A spouse involved in a divorce, having a cause of action in tort against his or her spouse, is not required to bring that action in the divorce case and can pursue the claim in circuit court. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993).

### **Trusts.**

The statute does not give a chancellor the authority to establish a trust for a child with the support funds paid out of the amount established for child support. *Smith v. Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000).

### **Written Findings.**

Where noncustodial parent's income exceeds the amount for which there is a specific entry on the child-support chart, necessitating a separate calculation made in accordance with the child-support guidelines, the same imperative applies regarding written findings for deviation from the level of support indicated by the guidelines. *Stepp v. Gray*, 58 Ark. App. 229, 947 S.W.2d 798 (1997).

Trial court erred in awarding to the mother, the noncustodial parent, the right to claim a child for tax exemption purposes without providing the requisite written or specific findings to support the decision; an award of a tax exemption to a noncustodial parent resulted in a deviation from the child support chart. *Dumas v. Tucker*, 82 Ark. App. 173, 119 S.W.3d 516 (2003).

Where the husband's income of \$540,217.00 was reduced to an annual salary of \$476,171.00 and the trial court deviated downward from the family support chart in reducing his child support to \$7607.75 a month, the award was reversed because the trial court failed to make specific findings supporting a deviation. *Morehouse v. Lawson*, 94 Ark. App. 374, 231 S.W.3d 86 (2006).

**Cited:** *Law v. Law*, 248 Ark. 894, 455 S.W.2d 854 (1970); *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982); *Reynolds*



v. Reynolds, 299 Ark. 200, 771 S.W.2d 764 (1989); Roe v. State, 304 Ark. 673, 804 S.W.2d 708 (1991); Green v. Bell, 308 Ark. 473, 826 S.W.2d 226 (1992); Heflin v. Bell, 52 Ark. App. 201, 916 S.W.2d 769 (1996); Sanderson v. Harris, 330 Ark. 741, 957

S.W.2d 685 (1997); Guest v. San Pedro, 70 Ark. App. 389, 19 S.W.3d 62 (2000); Weir v. Phillips, 75 Ark. App. 208, 55 S.W.3d 804 (2001); Johnson v. Cotton-Johnson, 88 Ark. App. 67, 194 S.W.3d 806 (2004).

### 9-12-313. Enforcement of separation agreements and decrees of court.

Courts of equity may enforce the performance of written agreements between husband and wife made and entered into in contemplation of either separation or divorce and decrees or orders for alimony and maintenance by sequestration of the property of either party, or that of his or her sureties, or by such other lawful ways and means, including equitable garnishments or contempt proceedings, as are in conformity with rules and practices of courts of equity.

**History.** Rev. Stat., ch. 51, § 11; C. & M. Dig., § 3509; Pope's Dig., § 4391; Acts

1941, No. 290, § 1; 1979, No. 705, § 4; A.S.A. 1947, § 34-1212.

### CASE NOTES

#### ANALYSIS

Ability to Pay.  
Agreements Between Parties.  
Bankruptcy.  
Decrees or Orders.  
Jurisdiction.  
No Binding Agreement.  
Security for Payment.

#### Ability to Pay.

One held under order of the chancery court in a divorce which directs that he be detained in custody until he has executed a bond for performance of the court's orders in regard to the payment of alimony and suit money will not be released on habeas corpus in the circuit court at least if there is no showing that he is unable to perform the judgment of the chancery court. *Ex parte Caple*, 81 Ark. 504, 99 S.W. 830 (1907).

Court had authority to sequester or impound husband's property to secure alimony payments. *Harbour v. Harbour*, 230 Ark. 627, 324 S.W.2d 115 (1959).

This section grants to a chancery court the authority to sequester a divorced obligor's property to secure future child support payments, subject to proper notice to the obligor. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (supplemental opinion).

Income from a spendthrift trust can be reached by means of equitable garnishment or other means to satisfy a judgment for an arrearage in alimony. *Council v. Owens*, 28 Ark. App. 49, 770 S.W.2d 193 (1989).

#### Agreements Between Parties.

Court of equity has power to modify award for child support when required for changed conditions and best interests of child even though award is based in agreement of parties. *Reiter v. Reiter*, 225 Ark. 157, 278 S.W.2d 644 (1955).

Chancery court may enforce by contempt proceedings property settlements made part of divorce decree by reference. *Thomas v. Thomas*, 246 Ark. 1126, 443 S.W.2d 534 (1969).

Trial court which granted divorce has no power to issue contempt citation for failure to comply with property settlement agreement which was not incorporated in divorce decree. *Henry v. Henry*, 247 Ark. 771, 447 S.W.2d 657 (1969).

Chancery courts are no longer to recognize private agreements modifying the amount of child support after July 20, 1987. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

Questions relating to the construction of separation agreements between husband and wife are governed by the rules gener-

ally applicable to other contracts. *Krupnick v. Ray*, 61 F.3d 662 (8th Cir. 1995).

A chancellor had power to enforce the parties' separation agreement, even though no decree of divorce had been entered, where the agreement indicated that it was entered into in contemplation of separation and determined the rights and obligations of the parties during their separation. *Grider v. Grider*, 62 Ark. App. 99, 968 S.W.2d 653 (1998).

Because it is within the trial court's sound discretion to approve, disapprove, or modify a separation agreement the court also has the authority to refuse to enforce the agreement. *Rutherford v. Rutherford*, 81 Ark. App. 122, 98 S.W.3d 842 (2003).

### **Bankruptcy.**

Payments ordered pursuant to a divorce decree are debts to the spouse for bankruptcy purposes. *Johnston v. Henson*, 197 B.R. 299 (Bankr. E.D. Ark. 1996); *Schmitt v. Eubanks*, 197 B.R. 312 (Bankr. W.D. Ark. 1996).

### **Decrees or Orders.**

After a decree has been rendered for permanent alimony, payment thereof may be enforced by attachments or orders committing for contempt. *Ex parte Hall*, 125 Ark. 309, 188 S.W. 827 (1916).

Where a decree of divorce ordered a husband to pay a certain amount as alimony to the wife and the husband in a proceeding to compel performance of the order admitted that he had sufficient funds at the time of the decree, it devolved upon him to account for them and the chancellor was not bound to accept as true his unsupported statement that the funds had been stolen from him. *East v. East*, 148 Ark. 143, 229 S.W. 5 (1921).

Courts of chancery have the inherent power to enforce their decrees awarding alimony and may do so by punishing the

recalcitrant husband as for contempt. *Ex parte Coulter*, 160 Ark. 550, 255 S.W. 15 (1923).

There was sufficient evidence of husband's willful disobedience of the court ordered maintenance and support to hold him in contempt of court under this section. *Barker v. Barker*, 271 Ark. 956, 611 S.W.2d 787 (1981).

### **Jurisdiction.**

Where the court had made an order for monthly payments to the wife for maintenance, the fact that an appeal had been prayed did not deprive the court of jurisdiction to enforce its order. *Gray v. Gray*, 202 Ark. 1154, 155 S.W.2d 575 (1941).

### **No Binding Agreement.**

Trial court erred in its conclusion that the wife was a party to a binding agreement, because the parties had no written agreement under which the trial court could order performance, when the parties initial recitation of their agreement was unilateral and was not conducted in open court; the wife never assented to the oral stipulations of the agreement in open court, and vigorously refuted the existence of an agreement. *Jenkins v. Jenkins*, 103 Ark. App. 21, 285 S.W.3d 704 (2008).

### **Security for Payment.**

The chancery court in a proper case may require a recalcitrant husband to furnish security for payment of future installments of alimony. *Ex parte Caple*, 81 Ark. 504, 99 S.W. 830 (1907); *Ex parte Coulter*, 160 Ark. 550, 255 S.W. 15 (1923).

**Cited:** *Reynolds v. Tassin*, 212 Ark. 1020, 208 S.W.2d 987 (1948); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953); *Strasner v. Strasner*, 232 Ark. 478, 338 S.W.2d 679 (1960); *Latty v. Latty*, 235 Ark. 802, 362 S.W.2d 676 (1962); *Gooch v. Gooch*, 10 Ark. App. 432, 664 S.W.2d 900 (1984).

## **9-12-314. Modification of allowance for alimony and maintenance — Child support.**

(a) The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance as may be proper and may order any reasonable sum to be paid for the support of the wife or the husband during the pending of a complaint for a divorce.

(b) Any decree, judgment, or order that contains a provision for the payment of money for the support and care of any child or children through the registry of the court or through the Arkansas child support clearinghouse shall be final judgment as to any installment or payment of money that has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

(c) The court may not set aside, alter, or modify any decree, judgment, or order that has accrued unpaid support prior to the filing of the motion. However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent.

(d) Nothing in this section shall be construed to limit the jurisdiction of the court to proceed to enforce a decree, judgment, or order for the support of a minor child or children through contempt proceedings when the arrearage is reduced to judgment under subsection (b) of this section.

**History.** Rev. Stat., ch. 51, § 12; C. & M. Dig., § 3510; Pope's Dig., § 4392; Acts 1979, No. 705, § 5; A.S.A. 1947, § 34-1213; Acts 1987, No. 1057, § 1; 1997, No. 1296, § 11.

**Cross References.** Uniform Interstate Family Support Act, § 9-17-101 et seq.

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Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 371.



## CASE NOTES

## ANALYSIS

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Application to Modify.  
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—In General.  
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Duration of Alimony.  
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**Applicability.**

The 1979 amendment to this section could not be retroactively applied, absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

**Agreements Between Parties.**

The chancery court cannot modify a contract for alimony in a specific sum. *Pryor v. Pryor*, 88 Ark. 302, 114 S.W. 700 (1908) (decision prior to 1987 amendment); *Meffert v. Meffert*, 118 Ark. 582, 177 S.W. 1 (1915).

An alimony agreement entered into between the parties prior to the decree, but subsequently made a part of the divorce decree, could not be modified. *McCue v. McCue*, 210 Ark. 826, 197 S.W.2d 938 (1946) (decision prior to 1987 amendment).

The power of a court to modify a decree for the support of minor children cannot be defeated by an agreement between the parents even when the agreement is incorporated in the decree. *Lively v. Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953).

Where the parties to a divorce action merely agree upon the amount the court should fix by its decree as alimony or support, without intending to confer on the wife an independent cause of action, the agreement becomes merged in the

decree and loses its contractual nature so that a court may modify the decree. *Lively v. Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953).

Where a decree for alimony or support is based on an independent contract between parties which is incorporated in the decree and approved by the court as an independent contract, it does not merge into the court's award and is not subject to modification except by consent of the parties. *Lively v. Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953).

Waiver, signed by husband alone, which provided that amount payable for support of child and alimony to wife was to be modified if there was a change in conditions, was not binding on the court. *Adams v. Adams*, 223 Ark. 656, 267 S.W.2d 778 (1954).

Where only evidence in the record of an agreement between the parties as to alimony and support was a recital in the decree of the fact and terms of the agreement, agreement not regarded as an independent contract but merely as a stipulation as to the amounts to be allowed by the court and, therefore, subject to modification. *Law v. Law*, 248 Ark. 894, 455 S.W.2d 854 (1970).

Evidence insufficient to show that divorce decree was an independent contract between parties and therefore alimony award could be modified. *Songer v. Songer*, 267 Ark. 1075, 594 S.W.2d 33 (Ct. App. 1980) (preceding decisions prior to 1987 amendment).

Prior to 1987, agreements between former spouses reducing the amount of child support payments did not bind the court, but the court could recognize such an agreement (1) if the agreement was supported by a valid consideration, or (2) if it were inequitable to do otherwise, thus where the mother gave up the right to 32% of the father's income as previously ordered but gained an increase in the fixed amount of support from \$200.00 to \$250.00 per month over a period of time there was valid consideration and the chancellor did not err in recognizing the agreement as to the amount of arrearages due before the 1987 amendment to this section. *Sullivan v. Edens*, 304 Ark. 133, 801 S.W.2d 32 (1990), superseded by stat-

ute as stated in, *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992), superseded by statute as stated in, *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

Whether provisions regarding child support are in a divorce decree or property settlement contract, the court always retains authority and jurisdiction to modify child support obligations. *Warren v. Kordsmeier*, 56 Ark. App. 52, 938 S.W.2d 237 (1997).

Trial court erroneously recognized agreement to reduce child support between parties; evidence on record did not show equitable estoppel on the part of the father. *Shroyer v. Kauffman*, 75 Ark. App. 267, 58 S.W.3d 861 (2001).

### **Application to Modify.**

Decrees for continuing alimony are always subject to the modification of the court upon application of either party. *Schley v. Dodge*, 206 Ark. 1151, 178 S.W.2d 851 (1944).

Notice of application to modify allowance of alimony need only be such as is reasonably calculated to give the opposite party knowledge of the proceeding and opportunity to be heard. *Schley v. Dodge*, 206 Ark. 1151, 178 S.W.2d 851 (1944).

Where modification of allowance of alimony is sought, the application should be made in the original suit and not in an independent proceeding. *Schley v. Dodge*, 206 Ark. 1151, 178 S.W.2d 851 (1944).

Petition for modification is not precluded by petitioner's arrearage in alimony and child support payments. *Barnes v. Barnes*, 246 Ark. 624, 439 S.W.2d 37 (1969).

Order awarding mother past-due child support was upheld because the father had not filed any motion to modify the order on the basis that a later case prohibited child support payments due to income from Social Security supplemental security income. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004).

### **Change in Conditions.**

#### **—In General.**

Allowance of alimony is subject to modification by the court to meet changed conditions. *McConnell v. McConnell*, 98 Ark. 193, 136 S.W. 931 (1911).

When a decree is entered fixing and allowing alimony for the support and maintenance of the wife, that decree lim-

its and defines the extent of the husband's obligation in that respect, but the allowance is always subject to modification by the court to meet the changed situation and conditions of the parties in interest. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

The amount allowed for child support is subject to modification when required by changed conditions. *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962).

The father could not of his own volition reduce the monthly payment made for his children when one of his children became of age; the court alone had the right to change the amount of the award for the support of the minor children. *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962).

A decree for maintenance and support is always subject to modification by application of either party upon a showing of a change in circumstances. *Barnes v. Barnes*, 246 Ark. 624, 439 S.W.2d 37 (1969).

#### **—Not Shown.**

Former husband was not entitled to cease payment of alimony where former wife lived with a man but did not marry him. *Byrd v. Byrd*, 252 Ark. 202, 478 S.W.2d 45 (1972).

A change in circumstances sufficient to support a modification of alimony was not shown where the former wife began to cohabit with another man in her home, but the former wife's financial condition was the same as it was at the time of the divorce and the man's financial contributions to household expenses were no greater than contributions made by the former wife's father, who lived with her from the time of the divorce until his death. *Herman v. Herman*, 335 Ark. 36, 977 S.W.2d 209 (1998).

#### **—Remarriage.**

Chancellor had jurisdiction to change the order providing for maintenance where wife remarried. *Perry v. Perry*, 229 Ark. 202, 313 S.W.2d 851 (1958).

Remarriage is a circumstance to be considered in determining a change in circumstances. *Barnes v. Barnes*, 246 Ark. 624, 439 S.W.2d 37 (1969).

#### **—Shown.**

Change in conditions held to warrant modification. *Ray v. Ray*, 205 Ark. 765, 170 S.W.2d 681 (1943).



Chancellor did not abuse his discretion in holding that there has been a change in wife's circumstances. *Bracken v. Bracken*, 302 Ark. 103, 787 S.W.2d 678 (1990).

Trial court did not abuse its discretion in awarding the wife an increase in alimony where the wife was being treated for the progressive disease of rheumatoid arthritis, which her doctor testified had become worse since the last hearing, and he was unable to pay for the treatment at this time; furthermore, her doctor testified that it was his opinion that she was unable to hold a regular job, and in setting the \$4500 monthly alimony, the trial court took into consideration both the wife's need for a new vehicle and some major home repairs that were going to need to be made. *Matthews v. Matthews*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 519 (May 20, 2009).

#### **Continuing Jurisdiction.**

An order for alimony may be set aside at a subsequent term. *Poe v. Poe*, 93 Ark. 426, 124 S.W. 1029 (1910).

Court that granted divorce to husband had jurisdiction to modify the order after it had been affirmed on appeal and mandate was filed in the chancery court after institution of proceeding to modify. *Sheppard v. Sheppard*, 192 Ark. 298, 90 S.W.2d 960 (1936).

The chancery court granting a divorce has continuing jurisdiction to modify the original allowance for maintenance of the minor children of the divorced parents and will do so upon a showing of changed conditions. *Watnick v. Bockman*, 209 Ark. 696, 192 S.W.2d 131 (1946).

The chancery court has continuing jurisdiction to modify child support and custody orders, but only when the moving party has demonstrated a change in circumstances requiring modification. *Slaton v. Slaton*, 330 Ark. 287, 956 S.W.2d 150 (1997).

#### **Duration of Alimony.**

A decree ordering that alimony would terminate only upon the death of either party violated statutory and case authority that, in the absence of a settlement agreement to the contrary, an award of alimony is always subject to modification, upon application of either party, notwithstanding that the decree also stated that the court would retain jurisdiction of the

alimony issue. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000).

#### **Failure to Modify.**

Since the defendant did not file a motion to modify child support when his son turned 18, the chancellor should not have retroactively reduced the defendant's child support arrearages which had become final judgments. *Arkansas Dep't of Human Servs. v. Porter*, 306 Ark. 190, 810 S.W.2d 949 (1991).

Trial court did not err in awarding mother past-due child support where the original order of support in 1995 was made prior to the ruling in *Davis*, which held that Arkansas courts could not order child support payments based on income from federal SSI benefits; further, because the case was a one-issue case, which was tried on the pleadings and did not involve child custody, the trial judge did not abuse his discretion in denying father's motion to transfer. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004).

#### **Insurance Policy.**

Provisions that award the ex-wife the benefit of some interest in a policy of insurance on an ex-husband's life do not violate public policy, because the insurance policy is not a wagering policy taken out by one with no insurable interest on the life of another, but is one taken out by the husband, who may take out a policy on his own life and name anyone he pleases as beneficiary. *Dodson v. Dodson*, 37 Ark. App. 86, 825 S.W.2d 608 (1992).

Where a written property settlement in contemplation of divorce provided the husband would maintain his present life insurance program and name the wife irrevocable beneficiary, the insurance policy was a bargained-for item and therefore should be replaced if allowed to lapse. *Dodson v. Dodson*, 37 Ark. App. 86, 825 S.W.2d 608 (1992).

#### **Marital Property.**

To the extent a spouse acquires an enforceable right during the marriage to recover fees under a contingency fee contract, the spouse acquired marital property; any difficulty in valuing contingency fee contracts may be solved by reserving jurisdiction in the trial court in order to await the outcome of the underlying actions. *McDermott v. McDermott*, 336 Ark. 557, 986 S.W.2d 843 (1999).



Credit card debts incurred by one party during the period of the parties' legal separation were marital debts that the chancellor had discretion to divide between the parties. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

Funds acquired by one party and deposited into the parties' joint checking account prior to their divorce are marital property subject to division by the court. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

#### **Medical Insurance.**

Even though wife filed no claim for relief in response to husband's motion for modification of support order, husband was properly ordered to continue to maintain a policy of hospitalization and medical insurance on the eldest son. *James v. James*, 52 Ark. App. 29, 914 S.W.2d 773 (1996).

#### **Past Due Support.**

Mother estopped from collecting past due child support from father, where the parents continued to live together after the divorce, and the father was the children's primary supporter subsequent to the divorce and until the parents sepa-

rated. *Ramsey v. Ramsey*, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

A child support judgment would also be subject to the equitable defenses that apply to all other judgments. *Ramsey v. Ramsey*, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

#### **Real Party in Interest.**

For purposes of determining the real party in interest in a situation where the custodial parent has assigned his or her child support rights to the Office of Child Support Enforcement, it is immaterial whether the custodial parent is receiving public assistance on behalf of the child. *Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

**Cited:** *Kirkland v. Wright*, 247 Ark. 794, 448 S.W.2d 19 (1969); *Carter v. Clausen*, 263 Ark. 344, 565 S.W.2d 17 (1978); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980); *White v. Winston*, 302 Ark. 345, 789 S.W.2d 459 (1990); *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998); *Dunavant v. Dunavant*, 66 Ark. App. 1, 986 S.W.2d 880 (1999).

### **9-12-315. Division of property.**

(a) At the time a divorce decree is entered:

(1)(A) All marital property shall be distributed one-half (½) to each party unless the court finds such a division to be inequitable. In that event the court shall make some other division that the court deems equitable taking into consideration:

- (i) The length of the marriage;
- (ii) Age, health, and station in life of the parties;
- (iii) Occupation of the parties;
- (iv) Amount and sources of income;
- (v) Vocational skills;
- (vi) Employability;
- (vii) Estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income;
- (viii) Contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and
- (ix) The federal income tax consequences of the court's division of property.

(B) When property is divided pursuant to the foregoing considerations the court must state its basis and reasons for not dividing the

marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter;

(2) All other property shall be returned to the party who owned it prior to the marriage unless the court shall make some other division that the court deems equitable taking into consideration those factors enumerated in subdivision (a)(1) of this section, in which event the court must state in writing its basis and reasons for not returning the property to the party who owned it at the time of the marriage.

(3)(A) Every such final order or judgment shall designate the specific real and personal property to which each party is entitled.

(B) When it appears from the evidence in the case to the satisfaction of the court that the real estate is not susceptible of the division as provided for in this section without great prejudice to the parties interested, the court shall order a sale of the real estate. The sale shall be made by a commissioner to be appointed by the court for that purpose at public auction to the highest bidder upon the terms and conditions and at the time and place fixed by the court. The proceeds of every such sale, after deducting the cost and expenses of the sale, including the fee allowed the commissioner by the court for his or her services, shall be paid into the court and by the court divided among the parties in proportion to their respective rights in the premises.

(C) The proceedings for enforcing these orders may be by petition of either party specifying the property the other has failed to restore or deliver, upon which the court may proceed to hear and determine the same in a summary manner after ten (10) days' notice to the opposite party. Such order, judgment, or decree shall be a bar to all claims of dower or curtesy in and to any of the lands or personalty then owned or thereafter acquired by either party;

(4) When stocks, bonds, or other securities issued by a corporation, association, or government entity make up part of the marital property, the court shall designate in its final order or judgment the specific property in securities to which each party is entitled, or after determining the fair market value of the securities, may order and adjudge that the securities be distributed to one (1) party on condition that one-half ( $\frac{1}{2}$ ) the fair market value of the securities in money or other property be set aside and distributed to the other party in lieu of division and distribution of the securities.

(b) For the purpose of this section, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement;

(2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;



(3) Property acquired by a spouse after a decree of divorce from bed and board;

(4) Property excluded by valid agreement of the parties;

(5) The increase in value of property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor;

(6) Benefits received or to be received from a workers' compensation claim, personal injury claim, or social security claim when those benefits are for any degree of permanent disability or future medical expenses; and

(7) Income from property owned prior to the marriage or from property acquired by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor.

(c) The court is not required to address the division of property at the time a divorce decree is entered if either party is involved in a bankruptcy proceeding.

**History.** Civil Code, § 461; Acts 1891, No. 26, § 1, p. 27; 1893, No. 102, § 1, p. 176; C. & M. Dig., § 3511; Pope's Dig., § 4393; Acts 1953, No. 348, § 3; 1979, No. 705, § 1; 1981, No. 69, § 1; 1981, No. 714, § 2; 1981, No. 798, §§ 1, 2; 1981, No. 799, §§ 1, 2; 1983, No. 369, §§ 1, 2; A.S.A. 1947, § 34-1214; Acts 1987, No. 676, § 1; 1989, No. 366, § 1; 1991, No. 1167, § 1; 1993, No. 1067, § 1; 2001, No. 1671, § 1.

**A.C.R.C. Notes.** As amended by Acts 2001, No. 1671, subsection (b) contained an additional subdivision which read: "The changes to this subsection (b) passed by the 83rd General Assembly meeting in Regular Session shall not apply to cases based upon facts which occurred prior to September 1, 2001."

**Publisher's Notes.** Acts 1981, No. 798,

§ 2, and No. 799, § 2, provided, in part, that the provisions of subdivisions (a)(1) and (b)(3) shall not be applicable to cases pending in the courts of this state on March 28, 1981, nor to any case pending in the courts of this state on March 28, 1981, where that case is dismissed and a case involving the same parties and issues is refiled within ninety (90) days after the dismissal of the original case.

Acts 1983, No. 369, § 2, provided, in part, that the provisions of subdivision (a)(4) shall be applicable to all cases pending on March 8, 1983, and all cases filed thereafter.

**Cross References.** Life interests and remainders, determination of present value, § 18-2-101 et seq.

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## CASE NOTES

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**Note.** — Many of the following cases were decided prior to the 1979 amendment to this section which made the section apply equally to both husband and wife and provided for an equal division of property rather than the  $\frac{1}{3}$  of the husband's real and personal property previously allotted to the wife.

### **Constitutionality.**

This section is not violative of the Equal Protection Clause, either facially or as applied. *Hamilton v. Hamilton*, 317 Ark. 572, 879 S.W.2d 416 (1994).

The classification of a pension plan as marital property does not violate the equal protection clause. *Skelton v. Skelton*, 339 Ark. 227, 5 S.W.3d 2 (1999).

### **In General.**

Trial court before passing on property rights of parties in divorce proceeding must determine (1) jurisdiction, (2) cause of action, and (3) who is injured party. *Smith v. Smith*, 223 Ark. 627, 267 S.W.2d 771 (1954).

The 1953 amendment simply expanded the property rights of certain nonresident wives in Arkansas divorce cases and the statute is a rule still to be applied in Arkansas divorce proceedings. *Knighton v. Knighton*, 259 Ark. 399, 533 S.W.2d 215 (1976).

Section 1-2-120(c) which provides that no action pending at the time any statutory provision is repealed shall be affected by the repeal was not applicable to the amendment of the section by Acts 1979, No. 705, which made this section gender-neutral, as the amendment did not repeal the prior statutes, but merely replaced statutes already clearly void for unconstitutionality. *Noble v. Noble*, 270 Ark. 602, 605 S.W.2d 453 (1980).

In a divorce action, the trial court is not required to divide in kind every piece of personal property. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982).



Although Arkansas is not truly a community property state, this section makes it so for all practical purposes when it is utilized in dissolution of marriage and distribution of assets. *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), overruled in part, *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986), questioned, *Liles v. Liles*, 289 Ark. 159, 711 S.W.2d 447 (1986), questioned, *Dillard v. Dillard*, 28 Ark. App. 217, 772 S.W.2d 355 (1989).

Independent action, subsequent to divorce decree, does not lie for division of marital property, for this section mandates that marital property be divided at the time the divorce is granted. Arkansas Supreme Court has carved out exceptions to the requirement that marital property be divided at the time the divorce decree is entered in cases where the parties specifically agree to postpone division of the property to a later date and where a divorce is granted by a foreign court lacking jurisdiction to divide Arkansas marital property. *Mitchell v. Meisch*, 22 Ark. App. 264, 739 S.W.2d 170 (1987).

This section does not compel mathematical precision in the distribution of property, rather, it simply requires that marital property be distributed equitably. *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005).

### **Purpose.**

The purpose of this section is to effect the equitable distribution of property upon divorce. *Stover v. Stover*, 287 Ark. 116, 696 S.W.2d 750 (1985); *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986); *Yockey v. Yockey*, 25 Ark. App. 321, 758 S.W.2d 421 (1988).

### **Applicability.**

Act 1979, No. 705, which made this section gender-neutral, could not be retroactively applied absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Acts 1979, No. 705, which amended this section, did not abolish § 9-12-317, the entirety property statute which had no constitutional infirmities as did this sec-

tion; accordingly, this section does not apply to property owned as tenants by the entirety. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981).

Acts 1979, No. 705, which amended this section, was applicable to property division where memorandum opinion was issued prior to amendment but final decree was issued after amendment. *Chrestman v. Chrestman*, 4 Ark. App. 281, 630 S.W.2d 60 (1982).

This section is not applicable to property held as tenants by the entirety. *Hale v. Hale*, 307 Ark. 546, 822 S.W.2d 836 (1992).

Although the chancellor's determinations that the houseboat purchased with husband's inheritance was marital property and the joint checking account was husband's separate property may have appeared inconsistent, they underscored the fine factual distinctions that often characterize marital-property divisions. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

Statute did not apply to property held as tenants by the entirety. *Banks v. Evans*, 347 Ark. 383, 64 S.W.3d 746 (2002).

### **Adequacy of Division.**

For cases discussing adequacy or appropriateness of specific divisions of property in particular circumstances, see *Morgan v. Morgan*, 193 Ark. 454, 100 S.W.2d 978 (1937); *Coltharp v. Coltharp*, 218 Ark. 215, 235 S.W.2d 884 (1951); *Turner v. Turner*, 219 Ark. 259, 243 S.W.2d 22 (1951); *Hewitt v. Morgan*, 220 Ark. 123, 246 S.W.2d 423 (1952); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *Koury v. Koury*, 230 Ark. 536, 323 S.W.2d 554 (1959); *Palmer v. Palmer*, 238 Ark. 690, 384 S.W.2d 256 (1964); *Mickle v. Mickle*, 252 Ark. 468, 479 S.W.2d 563 (1972); *Grant v. Grant*, 254 Ark. 1060, 497 S.W.2d 255 (1973); *Johnson v. Johnson*, 265 Ark. 925, 582 S.W.2d 32 (1979); *Gross v. Gross*, 266 Ark. 186, 585 S.W.2d 14 (1979); *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982); *Belanger v. Belanger*, 276 Ark. 522, 637 S.W.2d 557 (1982); *Duncan v. Duncan*, 11 Ark. App. 25, 665 S.W.2d 893 (1984).

The fact that one spouse made contributions to certain property does not necessarily require that those contributions be recognized in the property division upon divorce. *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986).



Where the chancellor stated he was relying on the reasons cited in subdivision (a)(1) of this section for not equally dividing the marital property, and the main reasons were that it was the wife who contributed to their acquisition and the husband was able to support himself, he then read into the record the nine factors listed under this subdivision, and the decree stated the grounds for the unequal division were those stated orally by the court at the conclusion of the trial, the chancellor sufficiently complied with subdivision (a)(1) of this section in stating his reasons for not equally dividing the marital property at the conclusion of the trial. *Jones v. Jones*, 17 Ark. App. 144, 705 S.W.2d 447 (1986).

If the chancellor intended that improvements to the wife's separate property be held to be marital property, he failed to adequately explain the basis for his unequal division, as required by subdivision (a)(1) of this section; therefore, the action was remanded. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

Where appellate court was unable to determine whether it was error for the trial court to make what was essentially a grossly disproportionate distribution of the marital retirement assets remaining after the settlement in favor of a wife because the record was not fully developed, reversal of the trial court's division of the parties' retirement and pension funds was warranted; on remand, the trial court could permit the introduction of such additional evidence as was necessary to make findings regarding the valuation of all of the parties' assets and the factors to be considered, clearly articulate whether it was making an equal or unequal distribution of assets and, if unequal, the reasons why such distribution was equitable. *Copeland v. Copeland*, 84 Ark. App. 303, 139 S.W.3d 145 (2003).

Trial court's property distribution in divorce proceedings was not improper because, although the wife argued that the husband's explanations about undisclosed accounts were inconsistent, the trial court nonetheless clearly accepted his testimony that the funds in the accounts belonged to a company and not to him personally; the trial court's conclusions were not clearly erroneous. *Conlee v. Conlee*, 370 Ark. 89, 257 S.W.3d 543 (2007).

### **Adverse Possession.**

Where wife pursuant to divorce decree was granted "use and occupancy of premises during her lifetime" grantee of wife under warranty deed could not establish adverse possession as against husband, since latter was not entitled to possession until death of wife. *Pierce v. Lowe*, 221 Ark. 796, 256 S.W.2d 43 (1953).

### **Agreement of Parties.**

A wife's agreement to relinquish all rights to her husband's property, if made for a wholly inadequate consideration, will be set aside on that account. *Leonard v. Leonard*, 101 Ark. 522, 142 S.W. 1133 (1912).

A divorce, reciting that alimony should be paid in full accord of the wife's right, title and interest in any property of the husband, was held to show that the parties agreed on a sum to be paid in lieu of the wife's right to a division of property under this section. *Erwin v. Erwin*, 179 Ark. 192, 14 S.W.2d 1100 (1929).

Where husband agreed that wife should have half of his property he became trustee as to wife's rights under the agreement and the court had power to compel specific performance against contention that wife was confined to an action for debt. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

Where an order was entered awarding to the wife an amount agreed upon by the husband and wife to be equal to one-third of their personal property and crops, the husband had no grounds to complain about the division of personal property, even though it could not be determined from the record whether the trial court made an award of exactly one third of the personal property to the wife. *Wilson v. Wilson*, 270 Ark. 485, 606 S.W.2d 56 (1980).

Reconciliation agreement failed to effectively exclude the subject properties from the marital property law. *Schichtel v. Schichtel*, 3 Ark. App. 36, 621 S.W.2d 504 (1981).

There are two types of agreements concerning the payment of alimony: (1) the agreement on the amount of alimony which is an independent contract which cannot be modified by the court; and (2) an agreement upon an amount that the court should fix as alimony and which the court can modify. *Shipley v. Shipley*, 305 Ark. 257, 807 S.W.2d 915 (1991).

Trial court erred by awarding a former wife an interest in land that her former husband inherited from his mother because a postnuptial agreement was not binding since the parties' marriage was not adequate consideration; moreover, there were no mutual obligations since the wife was not required to do anything. *Simmons v. Simmons*, 98 Ark. App. 12, 249 S.W.3d 843 (2007).

### **Authority of Court.**

The chancellor is given broad powers under this section to distribute all property in divorce, nonmarital as well as marital, to achieve an equitable division; the only requirement is that if he divides marital property other than evenly, or nonmarital property other than by returning it to the original owner, he will consider the nine factors specified in the statute, and fully explain his reasons for the record. *Williford v. Williford*, 280 Ark. 71, 655 S.W.2d 398 (1983).

The marital-property law vests in the trial court a marked measure of flexibility in apportioning the couple's total assets. *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986).

It is not an abuse of chancellor's discretion to ascertain extent of marital property as of date of the divorce, and evaluate it as of that date as well. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Chancellor has no authority to dispose of property rights in an award of separate maintenance. *Moore v. Moore*, 21 Ark. App. 165, 731 S.W.2d 215 (1987).

The chancellor is given broad powers under this section to distribute all property in divorce, nonmarital as well as marital, to achieve an equitable division. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990).

Chancellor's award on remand need not necessarily correspond to the findings regarding the extent of the separate and marital interests of the parties. *Cate v. Cate*, 35 Ark. App. 79, 812 S.W.2d 697 (1991).

Although this section provides a list of factors for the court to consider in dividing the marital property, the trial court did not err in permitting the parties to equally share in the proceeds of the sale of the marital home and the equity resulting from the wife's payment of the mortgage during the divorce proceedings because a

trial court has discretion to determine whether an offset is appropriate when parties to a divorce expend funds to preserve marital property during the pendency of proceedings; however, the parties were ordered to equally share expenses for repair to the marital residence that exceeded the minimum amount specified by the trial court. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005).

### **Conflict of Laws.**

Where a divorce decree rendered in another state divested the wife of all right and title in the husband's real estate, the wife was not entitled to husband's land in Arkansas since this section has no application to decrees rendered in other states. *Gwynn v. Rush*, 143 Ark. 4, 219 S.W. 339 (1920).

Where realty located in another state was acquired by the parties during their marriage and where the law of the other state does not recognize a wife's inchoate right of dower in her husband's separate property, the law of the other state would apply in determining the parties' rights in that property in a divorce proceeding. *Strang v. Strang*, 258 Ark. 139, 523 S.W.2d 887 (1975).

### **Contribution of Parties.**

Where wife was employed during most of the time of her marriage and contributed her earnings to the acquisition of furniture and other personal property, chancellor was justified upon granting divorce to wife in holding that wife had an equal claim on the items so acquired. *Carr v. Carr*, 226 Ark. 355, 289 S.W.2d 899 (1956).

Article 9, § 7 of the Constitution was meant to put a wife on an equal footing with her husband in the acquisition and transfer of property, but it does not purport to clothe the wife with superior property rights in the event of a divorce; accordingly, the trial court did not err when it ordered an equal division of all the marital property despite the wife's contention that it was inequitable because her earnings had formed the greater part of the purchase price. *Stuart v. Stuart*, 280 Ark. 546, 660 S.W.2d 162 (1983).

When one spouse makes significant contributions of time, effort and skill which are directly attributable to the increase in value of nonmarital property, the pre-



sumption arises that such increase belongs to the marital estate. *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987).

### **Conveyance to Spouse.**

This section does not apply to property which the husband conveyed to his wife on voluntary separation. *McNutt v. McNutt*, 78 Ark. 345, 78 Ark. 346, 95 S.W. 778 (1906); *Harbour v. Harbour*, 103 Ark. 273, 146 S.W. 867 (1912); *Apple v. Apple*, 105 Ark. 669, 152 S.W. 296 (1912).

This section does not apply to property which the husband conveyed to his wife for love and affection. *Dickson v. Dickson*, 102 Ark. 635, 145 S.W. 529 (1912).

Where husband obtained a divorce for cause, it was held that the wife was not entitled to return of the land which she had deeded to husband. *Price v. Price*, 127 Ark. 506, 192 S.W. 893 (1917).

A decree of divorce awarding to the wife real estate conveyed to her by the defendant as a gift in consideration of love and affection, was held erroneous as depriving her of dower on account of gifts theretofore made to which this section has no application. *Glover v. Glover*, 153 Ark. 167, 240 S.W. 716 (1922).

This statute is not applicable to gifts or advancements made by the husband to his wife; where a husband purchases land and takes the deed therefore in the name of his wife, there is a presumption that he intends to make an advancement to her and the law does not imply a promise or obligation on her part to refund the money or to divide the property purchased, or to hold the same in trust for him. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

A conveyance by the husband in anticipation of the wife's suit for divorce, and to prevent her from recovering alimony, is fraudulent and may be set aside. *Dowell v. Dowell*, 207 Ark. 578, 182 S.W.2d 344 (1944).

Presumption of a gift of the money to the wife was overcome by the fact that deed to property subsequently acquired was taken in the husband's name. *Angelletti v. Angelletti*, 209 Ark. 991, 193 S.W.2d 330 (1946).

Deed interest in lease by husband to wife in consideration of dismissal of divorce proceeding by wife and as evidence of good faith of husband was not a deed in

consideration or by reason of their marriage. *Turner v. Turner*, 219 Ark. 259, 243 S.W.2d 22 (1951).

In suit for divorce by wife the husband was not entitled to recover on cross-complaint for return of real estate transferred to wife during marriage, if transfer was for the purpose of defrauding the creditors of the husband. *McClure v. McClure*, 220 Ark. 312, 247 S.W.2d 466 (1952).

Evidence sufficient to support the trial court's finding that the transfer of money to wife was not a gift, voluntarily made, but rather was the product of a confidence betrayed or influence abused. *Marshall v. Marshall*, 271 Ark. 116, 607 S.W.2d 90 (Ct. App. 1980).

Where evidence showed that after the parties separated and the husband filed for divorce the husband conveyed his interest in their home to her it was properly held that upon their subsequent divorce the home was not marital property but was the wife's separate property because the husband had freely and voluntarily executed the conveyance to her. *Smith v. Smith*, 6 Ark. App. 252, 640 S.W.2d 458 (1982).

House held to be wife's separate property where husband signed deed, transferring real property to wife, and filed it for record, where although he continued to reside there, wife paid all real estate and personal property taxes, insurance and the mortgage, and where there was no evidence wife said she would deed the home back. *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996).

Trial court erred in declaring that couple's home was marital property where it had been deeded to the wife in 1982; there was no evidence that the wife agreed to do anything as an inducement or consideration for the transfer of property, the deed was immediately recorded, and there was no discussion of the wife deeding the property back to the husband. *Horton v. Horton*, 92 Ark. App. 22, 211 S.W.3d 35 (2005).

In the property division following a divorce, the couple's marital residence was the wife's separate property because the husband deeded the house to her and there was nothing to indicated that the husband would regain an interest in the house or that the wife agreed to do anything in consideration for the transfer. *Horton v. Horton*, 92 Ark. App. 22, 211 S.W.3d 35 (2005).



**Debts.**

Where the divided property is mortgaged, each takes subject thereto. *Crosser v. Crosser*, 121 Ark. 64, 180 S.W. 337 (1915).

Where debts were joint debts of marriage, wife required to share equally in income tax indebtedness on corporate fund. *McMurtray v. McMurtray*, 275 Ark. 303, 629 S.W.2d 285 (1982).

In a divorce action, chancellor was not required to divide the parties' debts, that is, to consider each debt and assign a party to pay; however, he was obligated to consider those debts in deciding the questions of alimony, support for the children, and perhaps the division of the property. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982).

A chancellor has the power to adjust marital debts as between the parties although this authority is not expressly given by the Code. *Warren v. Warren*, 33 Ark. App. 63, 800 S.W.2d 730 (1990).

If, during the parties' marriage, the indebtedness held against one spouse's non-marital properties was greatly reduced through payments made with marital funds, this section permits the chancellor to award the other spouse one-half of the reduction in indebtedness, either as an increase in value of non-marital property pursuant to subdivision (a)(2) of this section, or as a transformation of non-marital property into marital property through the investment of marital funds pursuant to subdivision (a)(1)(A) of this section. *Box v. Box*, 312 Ark. 550, 851 S.W.2d 437 (1993).

A chancellor has no authority to determine the validity of an obligation to a third party who is not a party to the divorce. *Grace v. Grace*, 326 Ark. 312, 930 S.W.2d 362 (1996).

Questions about marital debts, and whether they should be "considered" as liabilities under subdivision (a)(1)(A)(vii) of this section in assigning marital property, are questions of fact. *Grace v. Grace*, 326 Ark. 312, 930 S.W.2d 362 (1996).

Credit card debts incurred by one party during the period of the parties' legal separation were marital debts that the chancellor had discretion to divide between the parties. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

The trial court did not err when it held each party responsible for half of a stock margin debt where the husband testified that the debt was incurred to finance cost overruns on the construction of the parties' residence, for furnishing the house, and generally to pay for the parties' lifestyle and living expenses, and the wife did not refute this in her own testimony and, indeed, confirmed the high cost of the house and the furnishings. *Hunt v. Hunt*, 341 Ark. 173, 15 S.W.3d 334 (2000).

Although this section did not expressly give the chancellor the power to allocate marital debts as between the parties, the power was implied and to ignore debts would nullify divorce effectiveness and leave an essential item of divorce dispute unresolved. *Ellis v. Ellis*, 75 Ark. App. 173, 57 S.W.3d 220 (2001).

This section does not apply to the division of marital debts, hence, in Arkansas, there is no presumption that an equal division of debts must occur; accordingly, the trial judge's unequal division of the marital debts due to the disparity between the parties' incomes and their relative abilities to pay the debts was affirmed. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Trial court abused its discretion in ordering the parties to each pay one-half of the marital debt in a divorce proceeding as it was not economically feasible for the wife to use the property awarded to her as half of the marital property in order to pay half of the debt; the husband had the ability to earn substantially more income than she did. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

Trial court did not err in not awarding a husband interest accrued on a credit card after holding that the husband was entitled to a payment from his former wife in the amount of \$1,413 because the husband admitted that he had charged additional items on the credit card, which were included in the payoff, although he did not have any documentation of the amounts that he charged. *Lyons v. McInvale*, 98 Ark. App. 433, 256 S.W.3d 512 (2007).

**Designation by Decree.**

This section will not affect a husband's ownership of property, upon a divorce being granted to his wife, until the property is designated by the decree. *Hix v. Sun Ins. Co.*, 94 Ark. 485, 127 S.W. 737 (1910).

A decree of divorce which provides that "all property not disposed of at the commencement of this action which either party hereto obtained from or through the other during the marriage" shall be restored, refers only to the separate property of the parties. *Dawson v. Mays*, 159 Ark. 331, 252 S.W. 33 (1923).

Decree awarding wife one-third interest for life in oil leases and describing land covered by oil lease was in compliance with this section. *Turner v. Turner*, 219 Ark. 259, 243 S.W.2d 22 (1951).

### **Dower and Curtesy.**

Divorce bars dower. *Wood v. Wood*, 59 Ark. 441, 27 S.W. 641 (1894).

The purpose of this statute was to put an end to all controversies as to dower rights. *Beene v. Beene*, 64 Ark. 518, 43 S.W. 968 (1898); *Kendall v. Crenshaw*, 116 Ark. 427, 173 S.W. 393 (1915).

Generally a divorce by a court having jurisdiction terminates all obligations of either party to the other, cutting off the wife's right of dower and the husband's tenancy by the curtesy. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

Wife who obtained a divorce could not claim dower for the first time on appeal. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

In considering who is the injured party under § 9-12-301(5) (subsequently amended in 1991), the court is not required to make a full award of dower but may reduce the dower in keeping with the equities of the case. *Narisi v. Narisi*, 233 Ark. 525, 345 S.W.2d 620 (1961).

The statutory property division is considered as dower. *Alston v. Bitely*, 252 Ark. 79, 477 S.W.2d 446 (1972).

### **Election of Remedy.**

Where wife brought an action for annulment of the marriage and for establishment of a constructive trust and reformation of a deed in her favor and where the proof was insufficient to support the equitable lien theory, she could not then attempt to claim any of the benefits available to divorced persons under this section either directly or indirectly. *McIntire v. McIntire*, 270 Ark. 381, 605 S.W.2d 474 (Ct. App. 1980).

### **Fraud.**

Though this section does not authorize a division of personal property fraudu-

lently removed from the state by the husband, a court of equity has power to declare the lien under its general power to grant relief from fraud. *Austin v. Austin*, 143 Ark. 222, 220 S.W. 46 (1920).

Where a husband, in contemplation of his wife's suit for divorce, fraudulently conveyed his land and departed from the state, taking his personal property with him, the value of the personal property should be considered in determining her share of his property and the value of the real property declared to be a lien on the land. *Wilson v. Wilson*, 163 Ark. 294, 259 S.W. 742 (1924).

Evidence did not clearly show a fraudulent plan or scheme on part of the wife to obtain husband's property and was not sufficient to support a finding of fraud authorizing cancellation of deed to property voluntarily conveyed to wife. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

Where testimony supported finding that chattel mortgage was executed in fraud of and to defeat the wife's marital rights, the wife was entitled to her interest in the personalty free from the mortgage. *Dowell v. Dowell*, 207 Ark. 578, 182 S.W.2d 344 (1944).

In a federal diversity action by a judgment creditor to recover fraudulently transferred assets, the district court was under no obligation to consider that a state court approved a property settlement agreement as equally dividing the divorcing parties' assets. *FDIC v. Bell*, 106 F.3d 258 (8th Cir. 1997), cert. denied, *Hewlett-Packard Co. v. Repeat-O-Type Stencil Mfg. Corp.*, 523 U.S. 1022, 118 S. Ct. 1304, 140 L. Ed. 2d 470 (1998).

### **Jurisdiction.**

The filing of a complaint describing real property gives the court jurisdiction over it for the purpose of making an award in accordance with the statute; no attachment or other method of sequestration is necessary in order for the court to acquire jurisdiction. *Allen v. Allen*, 126 Ark. 164, 189 S.W. 841 (1916).

Description of property in pleadings is unnecessary to confer jurisdiction. *Hegwood v. Hegwood*, 133 Ark. 160, 202 S.W. 35 (1919).

Where a wife's complaint for divorce asked a division of property, the court acquired jurisdiction in rem of the hus-



band's property, though there was no personal service on the defendant nor seizure of the property under attachment or otherwise. *Austin v. Austin*, 143 Ark. 222, 220 S.W. 46 (1920).

A chancellor loses the authority to distribute property not mentioned in the original decree after the decree has become final. *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

This section does not authorize a division of marital property after the divorce decree has been entered, in the absence of fraud or other grounds for relief from the original judgment. *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

To the extent a spouse acquires an enforceable right during the marriage to recover fees under a contingency fee contract, the spouse acquired marital property; any difficulty in valuing contingency fee contracts may be solved by reserving jurisdiction in the trial court in order to await the outcome of the underlying actions. *McDermott v. McDermott*, 336 Ark. 557, 986 S.W.2d 843 (1999).

### Legislative Intent.

Nothing in this section suggests the legislature intended this provision to have any effect except with respect to divorce. *Ellis v. Ellis*, 315 Ark. 475, 868 S.W.2d 83 (1994).

Specific enumeration of the factors in subdivision (a)(1) of this section does not preclude a trial court from considering other relevant factors where exclusion of other factors would lead to absurd results or deny the intent of the legislature to allow the court to make an equitable division of property. *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005).

### Marital Property.

Trial court erred in holding that a wife had no marital interest in her former husband's full retirement benefits that had vested during marriage because the decree provided that the parties were to "divide equally the retirement which accrued during the marriage" and the wife was entitled to share in all of the husband's retirement benefits that accrued prior to the date the decree was filed not as of the date of the hearing as the husband claimed. *Allen v. Allen*, 99 Ark. App. 292, 259 S.W.3d 480 (2007).

Trial court did not err in a divorce action in equally dividing, as marital

property, 20 acres of land between the parties where a quitclaim deed executed by the husband's father to the parties, as husband and wife, was presumed delivered because it was recorded. The husband failed to rebut the presumption of delivery. *Baldrige v. Baldrige*, 100 Ark. App. 148, 265 S.W.3d 146 (2007).

Although the court concluded that an insured and her ex-husband were equal co-owners of a fire-destroyed house, it exercised its discretion under subdivision (a)(1)(A) of this section and awarded the insured 69% of the funds deposited by an insurance company with the court: (1) the insured sued the insurance company after it refused to pay her claim under her property insurance policy; (2) the ex-husband intervened in the suit after the judgment entered against the company was affirmed on appeal; (3) the insured was entitled to a credit for the post-fire mortgage payments that she made because she was not legally obligated to make those payments and they benefitted the ex-husband, as those payments increased the amount of insurance policy proceeds available after the mortgage balance was paid off; (4) the insured was entitled to receive \$15,000 to compensate her for her time and expense in suing the insurance company; (5) the insured was also entitled to recover the entire 12% penalty paid by the company under § 23-79-208(a)(1), given the fact that the ex-husband had not actively participated in attempting to obtain payment from the insurance company; and (6) the insured could not recover attorneys fees from the ex-husband pursuant to § 23-79-208(a)(1) or § 23-79-209(a) because those statutes allowed the recovery of fees from insurance companies. *Tweedle v. State Farm Fire & Cas. Co.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 63324 (July 22, 2008).

Increase in value of the husband's limited partnership's stock brokerage accounts was not his separate property where the husband's efforts, which resulted in the increase in the value of the accounts, caused the increase to be classified as marital property. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008).

Default judgment was set aside under Ark. R. Civ. P. 55(c)(3) where a former husband deceived his former wife into thinking a compromise had been reached and procured her non-attendance and fail-



ure to answer a complaint; the distinction between intrinsic and extrinsic fraud had been abolished. Moreover, her assertion that she received nothing in a property distribution was sufficient to raise a meritorious defense due to the presumptions under subdivision (a)(1)(A) and subsection (b) of this section. *West v. West*, 103 Ark. App. 269, 288 S.W.3d 680 (2008).

In a divorce action, the trial court did not err in awarding the wife half of the value of the husband's construction business because the trial court's valuation of the business was within the range of expert testimony; the trial court did not assign any goodwill to the value it found for the business. *Cummings v. Cummings*, 104 Ark. App. 315, — S.W.3d — (2009).

In a divorce action, the trial court did not err in determining that the wife was entitled to one-half of the husband's civil service retirement benefits; the trial court was not required to consider the amount the husband might have drawn if participating in the social security system. *Jackson v. Jackson*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 289 (Apr. 1, 2009).

Trial court properly ruled that a wife was not entitled to a husband's funds because they were disability income rather than retirement income; the wife's entitlement to retirement benefits, as contemplated under the divorce decree, would occur when the husband was paid benefits that were vested, irrevocable, or permanent in nature instead of tied to whether or not he could work. *Hatch v. Hatch*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 367 (Apr. 29, 2009).

#### —In General.

Marital property is marital property whether it is voluntarily or involuntarily acquired. *Morrison v. Morrison*, 286 Ark. 353, 692 S.W.2d 601 (1985).

This section requires that marital property be divided at the time the divorce is granted. *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

Where transactions result in great difficulty in tracing the manner in which nonmarital and marital property have been commingled, the property acquired in the final transaction may be declared marital property. *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988).

Husband's investment in a business operated by his sons was marital property

because the money came from a joint account and the wife could be awarded portion of accounts receivable from the sons' failed business venture as it was not equitable to the wife to have the classification of this asset turn on the enmity between the parties, and the fact that a receivable may not be collectable reduced its net value but did not make it non-marital property. *Farr v. Farr*, 89 Ark. App. 196, 201 S.W.3d 417 (2005).

Contribution of each party in the acquisition of marital property is a factor to be considered by the trial judge in making a division of marital property, however, it should not be the sole factor considered; thus, the court stated that, to the extent that *Stout v. Stout*, 4 Ark. App. 266, 630 S.W.2d 53 (1982) was in conflict with this opinion, it was overruled. *Baxley v. Baxley*, 92 Ark. App. 247, 212 S.W.3d 8 (2005).

In a divorce action, a trial court erred when it found that a travel trailer in which a former husband lived with his girlfriend was marital property under subsection (b) of this section when there was no evidence that indicated that the husband had any ownership interest in the trailer. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007).

#### —Accounts Receivable.

Accounts receivable may be treated as a marital asset with a provable net present value. *Warren v. Warren*, 270 Ark. 163, 603 S.W.2d 472 (Ct. App. 1980).

Evidence insufficient to show that chancellor did not take accounts receivable into consideration in making the property division. *Warren v. Warren*, 270 Ark. 163, 603 S.W.2d 472 (Ct. App. 1980).

Accounts receivable, fees, commissions or other property not in hand on the date of the divorce will not necessarily be excluded from being considered marital property. If such delayed assets are in keeping with the usual course of business or conduct, there is no reason to hold they are marital property; however, if there is evidence of fraud or other intent to delay receipt of the property in order to exclude it from consideration at the time of divorce, it may well be equitable to treat it as having been acquired during the marriage. *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), overruled in part, *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

Fees earned by husband which became payable after the date of marriage and prior to divorce were marital property; however, fees which had not yet been collected after divorce were not marital property but were separate property of husband. *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), overruled in part, *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

Accounts receivable are marital property. *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

#### —Bonus.

Where husband's bonus accrued and, therefore, was acquired during his marriage to wife, chancellor abused his discretion in finding that none of bonus was marital property. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Bonus which accrued during the parties' marriage is marital property subject to division. *Tortorich v. Tortorich*, 50 Ark. App. 114, 902 S.W.2d 247 (1995), dismissed, 324 Ark. 128, 919 S.W.2d 213 (1996).

#### —Capital Accounts.

Where there was no evidence that the former husband had a vested interest in the capital account with his employer that was fully distributive upon the date of the parties' divorce, the former wife was not entitled to any portion of that account. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982).

#### —Commissions.

Insurance policy renewal commissions were income generated by corporation which was nonmarital property, and thus, the corporation's insurance policy renewal commissions were themselves, pursuant to subdivision (b)(7) of this section, exempt from the definition of marital property. *Dalrymple v. Dalrymple*, 74 Ark. App. 372, 47 S.W.3d 920 (2001).

#### —Disability Income.

Disability payments received by the husband did not lose their status as separate property when they were deposited in a joint checking account where the husband testified that the wife only wrote checks on the joint checking account after first discussing it with him, that the parties understood the separate nature of

their checking accounts, and that he had not intended to give the wife an interest in the funds in the joint checking account. *McKay v. McKay*, 66 Ark. App. 268, 989 S.W.2d 560 (1999).

Where monthly disability income benefits had accrued to former husband, the benefits were a marital asset subject to division, and trial court erred in finding they had no cash value and awarding the asset solely to former husband. *Frigon v. Frigon*, 81 Ark. App. 314, 101 S.W.3d 879 (2003).

#### —Employment Compensation.

A cash advance paid to husband by husband's employer, acquired after the parties separated, was compensation for future services and contingent upon husband's future performance; thus, it was not earned during the marriage and was not marital property. *O'Neal v. O'Neal*, 55 Ark. App. 57, 929 S.W.2d 725 (1996).

When husband was awarded Federal Employee Liability Act proceeds as a result of permanent disabilities he suffered as a railroad engineer, the chancery court did not err in determining that these proceeds were non-marital property, and that husband was entitled to all the proceeds. *Collins v. Collins*, 347 Ark. 240, 61 S.W.3d 818 (2001).

Money accumulated in the husband's Deferred Retirement Option Plan during the parties' marriage constituted marital property of which the wife was entitled to a 50 percent interest. *Dial v. Dial*, 74 Ark. App. 30, 44 S.W.3d 768 (2001).

#### —Enhanced Business Career.

A husband's enhanced business career did not qualify as marital property subject to distribution. *Meinholz v. Meinholz*, 283 Ark. 509, 678 S.W.2d 348 (1984).

Medical degree, license or increased earnings capacity did not qualify as marital property. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

#### —Estates by Entirety.

Where wife's property prior to the marriage was conveyed to husband and wife after marriage as tenants by the entirety but not in consideration of the act of marriage, the wife was not entitled to be restored as sole owner. *Phillips v. Phillips*, 236 Ark. 225, 365 S.W.2d 261 (1963).

Where promissory notes arising out of the sale of a farm were payable to both



parties and thus were entireties property, it was error for the chancery court to award the husband a greater share of the notes than the wife as a means of equalizing differences in value of real property awarded the parties. *Ramsey v. Ramsey*, 259 Ark. 16, 531 S.W.2d 28 (1975).

Where the chancellor set aside the conveyance by husband which created an estate by the entirety in certain property, the property reverted to ownership by husband individually and the trial court could properly determine that the property was not "marital property" and that the wife should not share in it. *Chrestman v. Chrestman*, 4 Ark. App. 281, 630 S.W.2d 60 (1982).

This section is not applicable to property owned as tenants by the entirety. *Bramlett v. Bramlett*, 5 Ark. App. 217, 636 S.W.2d 294 (1982).

This section does not require that a home owned as an estate by the entirety be sold at the time of the divorce. *Bratcher v. Bratcher*, 5 Ark. App. 250, 635 S.W.2d 278 (1982).

The division of property held as tenants by the entirety is governed by § 9-12-317 rather than this section; § 9-12-317 is the only statutory authority for the division of tenancies by the entirety, and it provides for an equal division of the property without regard to gender or fault. Therefore chancellor erred in dividing property pursuant to this section. *Lyle v. Lyle*, 15 Ark. App. 202, 691 S.W.2d 188 (1985).

When property, personal or real, is placed in the names of a husband and wife, the presumption arises that they own the property as tenants by the entirety, and thus clear and convincing evidence is required to overcome the presumption that a spouse depositing money in joint account did not intend a gift or one-half interest to the other spouse. *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988).

Where parties' residence is held as a tenancy by the entirety, that estate is automatically dissolved when the final decree is rendered, unless the chancellor specifically provides otherwise, pursuant to § 9-12-317. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

Bank account held not to be owned as tenants by the entirety. *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996).

### —Exchange for Property.

In considering subdivision (b)(2) of this section, the "exchange" provision, only that portion of the property acquired during marriage in exchange for the nonmarital property should be set aside as nonmarital property. An exchange of a nonmarital interest for other property after marriage will yield only a nonmarital interest proportionate in value in the newly acquired property. *Jackson v. Jackson*, 298 Ark. 60, 765 S.W.2d 561 (1989).

### —Farm Equipment.

Farm equipment was separate property of the husband where he either owned it prior to the marriage or acquired it in exchange for other equipment owned prior to the marriage. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

### —Furniture.

Where, in a divorce suit, it was shown that the wife with her own means paid half of the price of furniture, a decree awarding the furniture to the husband was erroneous, the wife being entitled to an equal interest therein. *McIlroy v. McIlroy*, 191 Ark. 45, 83 S.W.2d 550 (1935).

Award to husband of furniture which was in the homestead at the time of the marriage was not error where record did not show that wife had not received in value an amount equaling one-third of husband's personalty. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

### —Gifts.

Where a husband advances money to improve his wife's separate property there is a rebuttable presumption that a gift was intended. *Carrick v. Carrick*, 13 Ark. App. 42, 679 S.W.2d 800 (1984).

A gift acquired by either spouse subsequent to the marriage is excluded from the definition of marital property which is subject to division upon divorce. *Lyons v. Lyons*, 13 Ark. App. 63, 679 S.W.2d 811 (1984).

Evidence insufficient to find that property acquired by husband was anything other than a gift. *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987).

Subdivision (b)(1) of this section does not except from marital property definition any income from, or increased value of, a gift. *Wagoner v. Wagoner*, 294 Ark. 82, 740 S.W.2d 915 (1987).



This section does not authorize a chancellor to divide gift property received by one spouse during marriage. *Hale v. Hale*, 307 Ark. 546, 822 S.W.2d 836 (1992).

Where husband received gift property during marriage, which he volunteered as security for a loan consolidation, it was appropriate for the chancellor to apply the gift property to satisfy the loan consolidation debt, but not to pay any other marital debts. *Hale v. Hale*, 307 Ark. 546, 822 S.W.2d 836 (1992).

Where it was clear from the facts and circumstances that husband had made some sort of gift to wife of a ring, valued at \$1,105, before the marriage, he divested himself of any interest in the ring; thus, the trial court erred in awarding the ring to the husband. *Weatherly v. Weatherly*, 87 Ark. App. 291, 190 S.W.3d 294 (2004).

#### —Goodwill.

For goodwill to be marital property, it must be a business asset with value independent of the presence or reputation of a particular individual — an asset which may be sold, transferred, conveyed, or pledged. Whether goodwill is marital property is a fact question, and to establish goodwill as marital property and divisible as such, a party must produce evidence establishing salability or marketability of that goodwill as a business asset of a professional practice. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Husband's professional association had no goodwill value independent of husband's presence and reputation. A solo professional practice may have business goodwill independent of the personal goodwill of the practitioner. Wife had the burden of proving that husband's professional association had business goodwill independent of husband's personal goodwill if it was to be considered a marital asset. *Tortorich v. Tortorich*, 50 Ark. App. 114, 902 S.W.2d 247 (1995), dismissed, 324 Ark. 128, 919 S.W.2d 213 (1996).

#### —Homestead.

The court in granting a divorce may treat the homestead as any other property. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

In the absence of statutory provisions to the contrary, the wife has no homestead rights in the husband's property after a

divorce unless the right thereto is reserved to her by the decree and it makes no difference whether the decree was obtained by the husband or by the wife. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

Courts granting decrees of divorce may award the possession of the homestead to either of the parties for such time and upon such terms and conditions as appear to be equitable and just. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944); *Schaefer v. Schaefer*, 235 Ark. 870, 362 S.W.2d 444 (1962).

Decree allowing homestead to husband was proper. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

A divorce decree giving a wife homestead rights to lands and personal property did not violate section. *Whaley v. Whaley*, 224 Ark. 632, 275 S.W.2d 634 (1955); *Fitzgerald v. Fitzgerald*, 227 Ark. 1063, 303 S.W.2d 577 (1957).

Portion of divorce decree refusing to award alimony and ordering sale of homestead was against the preponderance of the evidence, and wife would be permitted to maintain residence until children were older with husband paying alimony which would be used to make partial mortgage payments on home. *Warren v. Warren*, 270 Ark. 163, 603 S.W.2d 472 (Ct. App. 1980).

#### —Identification.

The trial court had authority to identify and determine what was marital property and, therefore, properly required that the landlords of a store operated by the husband be made parties to the divorce action and that they be enjoined from selling the inventory of the store in order to recover rent due from the husband. *Arnold v. Spears*, 343 Ark. 517, 36 S.W.3d 346 (2001).

#### —Improvements.

A spouse is entitled to improvements made during the marriage on nonmarital property if the spouse can prove he or she helped make them. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

The improvements made to the wife's house and yard, whether paid for by the joint tax refund checks or by the wife's income earned during the marriage, were marital property. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

It would be inequitable to give the husband an interest in the improvements to

the wife's separate property because, while the wife continued to make the mortgage payments thereon, the husband did not contribute to these payments although he was saving approximately \$250 in rent each month. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

A co-owner who makes improvements to the property is generally awarded the resulting increase in the value of the property, and not the actual costs of the improvements. *Flucht v. Villareal*, 28 Ark. App. 1, 770 S.W.2d 187 (1989).

Where parties were only married three years before separating, the husband was entitled to some benefit by reason of marital funds having been used to improve the wife's property that she brought into the marriage. *Weatherly v. Weatherly*, 87 Ark. App. 291, 190 S.W.3d 294 (2004).

#### —Income.

Any accumulation of income during the marriage from the husband's nonmarital property constituted marital property; thus, the rental income on the husband's farmland the year after his separation from his wife was not an increase in value of his nonmarital property under subdivision (b)(5) of this section. *Speer v. Speer*, 18 Ark. App. 186, 712 S.W.2d 659 (1986) (decision prior to 1989 amendment).

Income accumulated from nonmarital certificate of deposit accounts held to be marital property. *Wagoner v. Wagoner*, 294 Ark. 82, 740 S.W.2d 915 (1987); *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988) (decisions prior to 1989 amendment).

Wife's salary check and stipend, earned subsequent to the marriage, are clearly marital property, and should be divided pursuant to this section as the chancellor believes the equities require. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988).

#### —Inheritance.

There was no transfer to the husband of an interest in a money market certificate purchased with proceeds from inheritance so as to make the certificate subject to division upon divorce. *Hayse v. Hayse*, 4 Ark. App. 160B, 630 S.W.2d 48 (1982).

Tract of land inherited by the husband during the marriage was not subject to division in a divorce action. *Busby v. Busby*, 39 Ark. App. 108, 840 S.W.2d 195 (1992).

Husband failed to produce clear and convincing evidence to rebut the presumption that inheritance money placed in joint account was separate property where the records showed that although wife did not deposit or withdraw funds from the joint account, husband engaged in several actions that support a finding that he either bestowed a gift of the money to wife, or created a tenancy by the entirety in it. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

The chancellor's finding that the husband gave the wife an interest in a houseboat was not clearly erroneous, notwithstanding the husband's contention that he used the proceeds of an inheritance to purchase the houseboat and did not intend to make a gift of an interest in it to the wife, where the husband testified that, after he talked with the seller of the houseboat, the seller prepared the bill of sale in both parties' names and that he did not object because "she was my wife." *McKay v. McKay*, 66 Ark. App. 268, 989 S.W.2d 560 (1999).

Although the houseboat was purchased from inheritance, it was held jointly and the court found that a gift had been made. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

#### —Insurance Proceeds.

Where wife received proceeds of her son's insurance policy after her marriage took place but the son had died before the marriage took place, insurance proceeds were the separate property of the wife. *Wright v. Wright*, 29 Ark. App. 20, 779 S.W.2d 183 (1989).

Where defendant's employer during the marriage provided a long-term disability insurance plan for its executives; where these benefits were in lieu of workers' compensation, and were not awarded as benefits for a permanent disability or for future medical costs; and where the disability entitling the defendant to collect the benefits provided by the plan occurred during the marriage, the property was acquired during the marriage and was marital property as defined by statute. *Dunn v. Dunn*, 35 Ark. App. 89, 811 S.W.2d 336 (1991).

Appellant's disability benefits did not meet one of the statutory exceptions contained in this section and were therefore marital property. *Scott v. Scott*, 86 Ark. App. 120, 161 S.W.3d 307 (2004).



**—Interest.**

Interest earned on nonmarital property is marital property and is divided pursuant to this section. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988) (decision prior to 1989 amendment).

**—Joint Enterprise.**

Wife is entitled to half interest in real estate and business where she paid portion of consideration, regardless as to who held the legal title. *Price v. Price*, 217 Ark. 6, 228 S.W.2d 478 (1950).

Where it was obvious from the evidence that it was the joint efforts of the parties which acquired property, it would be inequitable to deprive the wife of the legal and equitable ownership of one-half interest in the property. *Nelson v. Nelson*, 267 Ark. 353, 590 S.W.2d 293 (1979).

**—Livestock.**

It was error for the chancellor to award \$50,000 in an investment account, which represented the proceeds from a sale of cattle which occurred after the parties' marriage, to the husband since there was no proof that the cattle were the same as owned by the husband prior to the marriage and since the wife actively assisted the husband in his cattle farming operation. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

In a divorce action, the court erred in determining that cattle were not marital assets because the cattle were purchased by the husband during the parties' marriage and while they were separated; the court should have divided the value of the cattle equally pursuant or provided an explanation why such a division would not be equitable under the circumstances. *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005).

**—Partnership Assets.**

Wife in a divorce proceeding was entitled to an allowance of one-third in husband's interest in a partnership. *Reed v. Reed*, 223 Ark. 292, 265 S.W.2d 531 (1954).

Where husband and wife operated store as partners during the marriage the husband was not entitled to the sole ownership of the store. *Phillips v. Phillips*, 236 Ark. 225, 365 S.W.2d 261 (1963).

In awarding a divorce to the wife, the chancellor should determine the value of a husband's interest in a partnership, treat-

ing accounts receivable as assets having a provable fair net present value, resulting in a monetary decree in the wife's favor, to be enforced if necessary by a charging order. *Riegler v. Riegler*, 243 Ark. 113, 419 S.W.2d 311 (1967); *Warren v. Warren*, 12 Ark. App. 260, 675 S.W.2d 371 (1984).

The trial court clearly erred when it ordered a former wife's interest in the parties' marital home to be applied to the net worth of a partnership, a business in which she had a lesser interest. *Glover v. Glover*, 4 Ark. App. 27, 627 S.W.2d 30 (1982).

A former wife's interest in a partnership and its assets, acquired during her marriage, constituted marital property, despite the wife's contention that she owned no property used in the partnership but instead only had a right to half the earnings of the partnership. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983).

**—Pension, Retirement Pay, Etc.**

An award of one-third of the money held by a divorced husband's guardian and derived from his pension from military service was held not error. *Stone v. Stone*, 188 Ark. 622, 67 S.W.2d 189 (1934).

Where portion of husband's contributions to a retirement plan were made prior to the marriage that portion acquired before marriage is his separate property. *Paulsen v. Paulsen*, 269 Ark. 523, 601 S.W.2d 873 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984); *Marshall v. Marshall*, 285 Ark. 426, 688 S.W.2d 279 (1985). But see, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984); *Gentry v. Gentry*, 282 Ark. 413, 668 S.W.2d 947 (1984); *Womack v. Womack*, 16 Ark. App. 139, 698 S.W.2d 306 (1985).

Military retirement pay is not a fixed and tangible asset that may be collected in a lump sum, but it terminates at death and has no loan, surrender, or redemption value, therefore military retirement pay is not marital property as contemplated by Act 705 of 1979. *Paulsen v. Paulsen*, 269 Ark. 523, 601 S.W.2d 873 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

It was improper for the court to deny wife one-half of the husband's vested rights in a money-purchase pension plan. *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).



Evidence sufficient to support the court's refusal to divide equally individual retirement account in a divorce proceeding. *Stout v. Stout*, 4 Ark. App. 266, 630 S.W.2d 53 (1982).

Where husband's individual retirement account was not fully distributable and was established with funds earned by the husband, it was not proper for the trial court to treat it as marital property. *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), overruled in part, *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

A husband's interest in the retirement plan sponsored by his employer is marital property subject to allocation under this section in a divorce action. *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Earnings or other property acquired by each spouse must be treated as marital property, unless falling within one of the statutory exceptions, and neither one can deprive the other of any interest in marital property by putting it temporarily beyond his or her own control, as by the purchase of annuities, participation in a retirement plan, or other device for postponing full enjoyment of the property. *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Husband's retirement plan was marital property subject to division where all requirements for receiving benefits, required years of service and contributions, occurred during the marriage and the husband was fully vested and was actually receiving benefits at the time of divorce. *Gentry v. Gentry*, 282 Ark. 413, 668 S.W.2d 947 (1984).

A pension is the result of direct or indirect efforts expended by one or both parties to the marriage; it is additional compensation for services rendered for the employer and a right acquired during the marriage. Hence, equitable considerations mandate its inclusion for distribution, where the employee has already qualified for benefits, and the other spouse, during the marriage, has foregone enjoyment of that additional compensation represented by the cost of the plan, whether or not it requires employee contributions. *Meinholz v. Meinholz*, 283 Ark. 509, 678 S.W.2d 348 (1984).

Disability retirement benefits are marital property. *Morrison v. Morrison*, 286 Ark. 353, 692 S.W.2d 601 (1985).

The fact that disability retirement benefits are paid out of one's own contributions plus the contributions of all others who are not disabled does not mean they are not marital property. *Morrison v. Morrison*, 286 Ark. 353, 692 S.W.2d 601 (1985).

Since the decision in *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), which held that husband's interest in retirement plan sponsored by his employer is marital property subject to allocation under this section, military retirement benefits payable in the future may be considered marital property and subject to division under this section. *Womack v. Womack*, 16 Ark. App. 139, 698 S.W.2d 306 (1985).

Vested retirement benefits not yet due and payable are marital property subject to division on divorce when based on contributions made or services rendered during the marriage; thus, retirement benefits based on service of the husband prior to the marriage were his separate property, and those benefits based on service after marriage were not mere increase in value of separate property, but were marital property subject to division. *Womack v. Womack*, 16 Ark. App. 139, 698 S.W.2d 306 (1985).

Although husband's military pension plan was noncontributory, the pension was nevertheless, in effect, part of the consideration of husband's employment contract with the military, i.e., a wage substitute. As it was consideration earned during the marriage, it constituted marital property. *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986).

Although husband entered military service prior to his marriage, subsequent military pension benefits accrued during marriage were marital property. *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986).

It was not an abuse of the chancellor's discretion to award the wife one-half of a fractional interest in the husband's retirement pay, the fraction having a numerator of the number of years the parties were married during his military service and the denominator being the number of years the husband had served upon retirement. *Askins v. Askins*, 288 Ark. 333, 704 S.W.2d 632 (1986).

Nonvested right in military retirement did not constitute property under this

section. *Durham v. Durham*, 289 Ark. 3, 708 S.W.2d 618 (1986).

The decisions in *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984) and *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986), which held that military retirement benefits constitute marital property to be equally distributed upon divorce, would not be applied retroactively to a divorce decree which became final four years prior to those decisions, because it would work a great hardship on the parties and would defeat the purposes underlying the doctrine of *res judicata*. *Wiles v. Wiles*, 289 Ark. 340, 711 S.W.2d 789 (1986).

Federal law did not permit state courts to divide military retirement pensions pursuant to a divorce settlement until the Uniformed Services Former Spouses' Protection Act in 1983; however, this act was retroactive only to June 26, 1981. Where the parties were divorced in February, 1981, the chancellor was not in error in dismissing the portion of the wife's petition concerning the military retirement pension, because the decree reflected the law as it existed at the time of the divorce. *Hendricks v. Hendricks*, 18 Ark. App. 41, 709 S.W.2d 827 (1986).

Contributions by employer were not marital property when made to ex-spouse's profit sharing and pension plans after the date of divorce. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Spouse's interest in a Major Needs Fund, in which all contributions were made by his employer, was vested and marital property. *Guinn v. Guinn*, 35 Ark. App. 199, 816 S.W.2d 629 (1991).

A spouse upon divorce is entitled to share in cost of living adjustments in retirement benefits applicable to the percentage of retirement benefits awarded to the spouse in the divorce decree. *Brown v. Brown*, 38 Ark. App. 99, 828 S.W.2d 601 (1992).

The language of this section does not include nonvested military benefits. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Wife who remarried her first husband was entitled to a percentage of the military retirement pay based upon the total number of years she was married to husband, not just for the number of years of the second marriage. *Christopher v.*

*Christopher*, 316 Ark. 215, 871 S.W.2d 398 (1994).

Where husband placed pension funds in the parties' joint account, the presumption imposed by law was that he intended to create a true joint tenancy with wife, which presumption was not overcome by his subsequent withdrawal of funds and placement of them in IRA accounts in his individual name. *Mathis v. Mathis*, 52 Ark. App. 155, 916 S.W.2d 131 (1996).

For a case showing a detailed account of how to calculate wife's share of husband's military retirement pay, see *Cherry v. Cherry*, 55 Ark. App. 178, 934 S.W.2d 936 (1996).

Enhancements to a retirement often increase in the later years and it might be inequitable to allow a person who had supported the spouse through the lean years to be deprived of those later awards, and the chancellor has considerable discretion to divide marital property other than one-half to each party when it is equitable to do so; thus the chancellor properly considered the increases in wife's salary following the separation and divorce in deciding that they constituted legitimate adjustments for retirement benefits in which husband could participate. *Brown v. Brown*, 332 Ark. 235, 962 S.W.2d 810 (1998).

Where the parties were married for the last seven of the 33 years that the wife was employed, the husband was entitled to half of seven thirty-third's of the wife's monthly pension benefit. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

Where the parties were married for the last seven of the 33 years that the wife was employed, the increase in value of the wife's pre-marriage contributions to her 401(k) plan did not constitute marital property. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

Where the wife's pension plan was a contribution plan, the court properly used the total contribution method to divide the plan, keeping in mind the difference in ages between the two parties. *Gray v. Gray*, 352 Ark. 443, 101 S.W.3d 816 (2003).

Pension-plan benefits are marital property to the extent that a spouse had a vested interest in those benefits; non-vested pension plans are not marital property. *Delacey v. Delacey*, 85 Ark. App. 419, 155 S.W.3d 701 (2004).



Court erred in awarding both retirement accounts to the wife where the wife's disability and need for financial security was not more pressing than the husband's disability and similar need simply because she was the "primary breadwinner" and made contributions to the retirement accounts. *Baxley v. Baxley*, 92 Ark. App. 247, 212 S.W.3d 8 (2005).

Property owned individually by a debtor and co-owned with his non-debtor wife became part of the bankruptcy estate; accordingly, where a debtor's non-debtor wife had filed for divorce post-petition and the state court had not entered a divorce decree and divided the marital property, the wife could not claim any rights or "exemptions" to the debtor's retirement funds as the wife's rights to the retirement funds were inchoate at best. In re Thomas, 331 B.R. 798 (Bankr. W.D. Ark. 2005).

#### —Personal Injury Claims.

The \$110,000.00 certificate of deposit, which represented a lump-sum payment for injury to the husband and which was titled in the names of both the husband and wife, should have been divided equally between the husband and wife upon divorce. *McDonald v. McDonald*, 19 Ark. App. 75, 716 S.W.2d 788 (1986).

The two future installments of the husband's personal injury settlement were properly classified as marital property. *McDonald v. McDonald*, 19 Ark. App. 75, 716 S.W.2d 788 (1986).

The chancellor's refusal to award the wife any portion of the two future installments of the husband's personal injury settlement was not against the preponderance of the evidence, where the chancellor recited the factors set forth in subdivision (a)(1) of this section and particularly mentioned the severity of the husband's injury and the likelihood he would not work again, while the wife maintained her ability to work. *McDonald v. McDonald*, 19 Ark. App. 75, 716 S.W.2d 788 (1986).

To the extent spouse acquired an enforceable right during the marriage to recover for personal injury, he acquired marital property. *Bunt v. Bunt*, 294 Ark. 507, 744 S.W.2d 718 (1988).

Except for those benefits from an unliquidated personal injury claim that would be for any degree of permanent disability or future medical expenses, the

remaining benefits or elements of damage from one's personal injury claim are subject to division as marital property pursuant to subdivision (a)(1)(A) of this section. *Clayton v. Clayton*, 297 Ark. 342, 760 S.W.2d 875 (1988).

Wife's claim, that settlement proceeds of a personal injury to her late husband were marital property, held without merit; the funds belonged to his estate, to be distributed pursuant to probate law. *Ellis v. Ellis*, 315 Ark. 475, 868 S.W.2d 83 (1994).

Although former husband was permanently impaired from any type of gainful employment, since the ultimate source of his disability could have been traced back to the wounds he suffered in World War II rather than to a specific "personal injury" sustained while employed or in consequence of a tortious act, his claim for his physical condition did not constitute a claim for "personal injury" as contemplated by subdivision (b)(6) of this section and therefore did not fall within the statutory marital-property exemption. *Mason v. Mason*, 319 Ark. 722, 895 S.W.2d 513 (1995).

#### —Presumption.

Property acquired by either spouse during the marriage carries the presumption of being marital property; the date of the acquisition is the key factor, and property acquired separately or jointly remains as such and must be divided accordingly at the time of divorce, unless the court finds it is not equitable. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988).

Once property, whether personal or real, is placed in the names of persons who are husband and wife, without specifying the manner in which they take, there is a presumption that they own the property as tenants by the entirety and it takes clear and convincing evidence to overcome that presumption. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988).

Once property is placed equally, in the names of both husband and wife, such property is presumed to be held by them as tenants by the entirety and, thus, marital property. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

#### —Property Acquired After Separation.

Wife could not exclude properties deeded to her after temporary order as



marital property acquired by a spouse after a legal separation, since there is no authority to hold that a temporary order is equivalent to legal separation. *Schichtel v. Schichtel*, 3 Ark. App. 36, 621 S.W.2d 504 (1981).

Where husband purchased a home while separated from his wife, but before any divorce or maintenance decree had been entered, the house was marital property subject to division. *Lee v. Lee*, 12 Ark. App. 226, 674 S.W.2d 505 (1984).

Where trial court had entered a temporary order prior to divorce action and that order did not deal with or affect the distribution of the parties' properties, subdivision (b)(3) of this section was not applicable and property acquired by the spouse after the order was marital property to be distributed one-half to each party, unless the court found the division inequitable. *Allen v. Allen*, 17 Ark. App. 38, 702 S.W.2d 819 (1986).

Assets acquired after separation and prior to a grant of divorce are marital property and are to be divided giving due consideration to the factors enunciated in subdivision (a)(1)(A) of this section. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988); *Cavin v. Cavin*, 308 Ark. 109, 823 S.W.2d 843 (1992).

When a chancellor declines to award a divorce and enters nothing more than a support order necessitated by a family breakup, there is no divorce from bed and board, and there is no basis for holding that property acquired by the parties thereafter is other than marital property unless it falls within some other exception found in this section. *Hadden v. Hadden*, 320 Ark. 480, 897 S.W.2d 568 (1995).

Funds acquired by one party and deposited into the parties' joint checking account prior to their divorce are marital property subject to division by the court. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

#### **—Property Acquired Before Marriage.**

In the division of property on granting a divorce to the wife, it was error to award to the wife sum as restoration of a sum received from her by her husband in consideration of marriage under this section where the sum was obtained before marriage. *Oliphant v. Oliphant*, 177 Ark. 613, 7 S.W.2d 783 (1928).

Although this section provides that the increase in value of property acquired prior to the marriage remains that party's sole and separate property, the chancellor may make some other division that he deems equitable. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990).

Although the increase in value in property acquired prior to marriage is not marital property, it is appropriate to recognize a spouse's contributions toward that increase in value when making a property division. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990).

#### **—Real Property.**

Evidence that husband parted with his equity in realty before abandoning his wife and did not reassert any claim to the property until after her death precluded the setting aside of the decree awarding the property to the wife. *Brown v. Brown*, 211 Ark. 241, 200 S.W.2d 488 (1947).

Award of interest in lands not excessive or unreasonable. *Cook v. Cook*, 233 Ark. 961, 349 S.W.2d 809 (1961).

Where the divorce is granted to the husband and the equities justify, chancery courts have power to award the wife an interest in her husband's real property. *Cook v. Cook*, 233 Ark. 961, 349 S.W.2d 809 (1961).

In a divorce action, a wife was entitled to her statutory one-third interest in her husband's undivided one-third interest in certain realty. *McCray v. McCray*, 256 Ark. 868, 514 S.W.2d 219 (1974).

Finding that wife was entitled to receive one-half of husband's equitable interest amount, was not clearly erroneous or clearly against the preponderance of the evidence. *Warren v. Warren*, 270 Ark. 163, 603 S.W.2d 472 (Ct. App. 1980).

Husband owned a separate interest in lot and house which were purchased with the proceeds of the sale of his separate property owned prior to the marriage. *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), overruled in part, *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

Chancellor was correct in finding that wife had a marital interest in one half of "marital profit," or appreciated value, of house, but erred in failing to give her credit for that part of the purchase price which she contributed through the use of

a joint down payment. *Williford v. Williford*, 280 Ark. 71, 655 S.W.2d 398 (1983).

Where husband owned house, prior to marriage, which was destroyed and rebuilt during marriage, the lot remained his separate property and was not "marital property"; the rebuilt dwelling did constitute marital property to the extent that joint funds were used to acquire the property. *Williford v. Williford*, 280 Ark. 71, 655 S.W.2d 398 (1983).

Where the former wife acquired property from her mother during the existence of the marriage for which the wife paid consideration, and where after acquiring title to the land the wife sold the timber thereon and handed the proceeds over to her mother, the chancellor did not err in the transaction as a loan and partial repayment and holding the acreage was marital property subject to division. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983).

Where the court found that the husband had made an original investment in a home prior to marriage the division of the proceeds of the home were modified to allow him credit for his investment. *Marshall v. Marshall*, 285 Ark. 426, 688 S.W.2d 279 (1985).

Proceeds inherited under the contracts for the sale of real properties are not marital property as defined in this section, nor were they held as tenants by the entirety since wife did not deposit them into an account so held; therefore, this amount is the sole and separate property of the wife. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988).

Without evidence of the before-and-after value of the property to show the existence and extent of any increase in the value of the nonmarital property, any reduction in debt on nonmarital property was not considered to be marital property to be divided equally; instead, the non-owning spouse was simply entitled to have the marital contribution considered in balancing the equities involved in the property division. *Powell v. Powell*, 82 Ark. App. 17, 110 S.W.3d 290 (2003).

#### —Stock.

Stock acquired with funds from joint account held to be marital property where evidence did not permit having of funds. *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988).

Sale of stock is not authorized by this section. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Where stock, acquired before marriage was exchanged for the balance existing in a profit sharing trust on the date of the plaintiff's retirement, and there were substantial increases in the value of both the profit sharing account prior to distribution and the stock obtained at the time of distribution, the chancellor erred in ruling that all of the stock was marital property under Arkansas law. *Cate v. Cate*, 35 Ark. App. 79, 812 S.W.2d 697 (1991).

It was error for the chancellor to find that shares of stock and certificates of deposit were separate nonmarital property where they were held jointly by the parties and there was no evidence to rebut the presumption that they were held as tenants by the entirety. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

Husband's stock in corporation he obtained in exchange for assets of his sole proprietorship, which he had operated for nearly 30 years before marrying the wife, was nonmarital property under subdivision (b)(2) of this section, as husband testified that strictly nonmarital property, the sole proprietorship's assets, was used to acquire the stock and the wife did not dispute that assertion. *Dalrymple v. Dalrymple*, 74 Ark. App. 372, 47 S.W.3d 920 (2001).

Trial judge did not err in crediting the value of the husband's appraiser over the wife's appraiser in determining the fair market value of the husband's medical clinic and surgery center. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Trial court did not err in valuing stock for the purpose of distribution by including a minority discount by taking the price per share that had been used in a previous sale and used in other offers and sales of the company's stock. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006).

Although stock the wife acquired before the marriage was not marital property, the increase in value of the stock was a marital asset and an unequal distribution of that asset of 20 percent to the husband was equitable because the initial \$25,000.00 for the purchase of the stock was paid from marital funds subsequent to the parties' marriage, and the increase



in the value of the stock was not totally attributable to the efforts of the wife but was due in large part to her efforts. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006).

Where wife had acquired stock before the marriage, under the "source of funds" rule, it was not marital property even though marital funds had been used to repay the loan from her grandparents for the purchase of the stock. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006).

#### —Stock Options.

Where a former husband held options to purchase shares of stock the chancellor properly found that the value of the options was the difference between the cost of exercising them and the worth of the stock, and he properly awarded the former wife one-half of that amount as marital property. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983).

#### —Trust Property.

The chancellor was correct in refusing to award the wife one-third of the corpus of the trust from which the husband was entitled only to monthly payments. *Kroha v. Kroha*, 265 Ark. 170, 578 S.W.2d 10 (1979).

The wife was entitled to one-third absolutely of the husband's interest in a trust, since his interest was viewed as being personal property due to its alienability. *Gross v. Gross*, 266 Ark. 186, 585 S.W.2d 14 (1979).

It was improper for court to deny wife interest in husband's vested rights in a profit-sharing trust agreement. *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).

#### —Valuation.

The chancellor's use of a "fair market value" standard for valuing the parties' interest in an ongoing business was not clearly erroneous. *Crismon v. Crismon*, 72 Ark. App. 116, 34 S.W.3d 763 (2000).

In a divorce action, the trial court erred by valuing the former husband's 50 percent interest in a surgery center based on his buy-sell agreement with another shareholder instead of by determining the fair market value as required by subdivision (a)(4) of this section; hence, on appeal the court reversed the decree as to the division of the marital estate and remanded the case for a proper valuation of

the surgery center followed by redistribution of the marital estate in compliance with this section. *Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003).

Trial court did not err by refusing to award a former wife any interest in a limited liability company founded by a former husband and others because the valuation of the husband's interest was merely speculative; the company had no operational history or goodwill. *Adametz v. Adametz*, 85 Ark. App. 401, 155 S.W.3d 695 (2004).

Trial court erred by deducting overhead expenses from accounts receivable in order to determine the valuation of a surgical practice because it amounted to a double deduction from the same asset; moreover, while the trial court was permitted to impose a tax rate on the receivables, it erred by applying a higher rate than the former husband was required to pay. *Adametz v. Adametz*, 85 Ark. App. 401, 155 S.W.3d 695 (2004).

#### —Work in Progress.

"Work in progress" is marital property subject to division in a divorce action. *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

#### —Workers' Compensation Claims.

A workers' compensation claim resulting from an injury which occurred during marriage, but which was not adjudicated or paid at the time the divorce was rendered, was subject to division as marital property. *Goode v. Goode*, 286 Ark. 463, 692 S.W.2d 757 (1985).

#### Pleadings.

Where a husband pleaded the unconstitutionality of the alimony and property division statutes in his answer to his wife's complaint for temporary maintenance, the issue of the unconstitutionality of the statutes was properly raised at trial, and the husband did not have to replead that issue in his answer to his wife's amended complaint seeking an absolute divorce. *Noble v. Noble*, 270 Ark. 602, 605 S.W.2d 453 (1980).

Chancellor erred in dividing the marital property under this section where only separate maintenance was sought in amended pleading. *Spencer v. Spencer*, 275 Ark. 112, 627 S.W.2d 550 (1982).

Chancellor is not required to divide any asset equally between the parties if rea-



sons for not doing so are stated. *Bunt v. Bunt*, 294 Ark. 507, 744 S.W.2d 718 (1988).

### **Redivision of Property.**

Wife's false statement during the course of negotiation concerning marital property that she had spent money her husband had given her for living expenses when in fact she had used it to make an interest free loan to a third party in return for which she received a promissory note should not have been considered by the trial court as a significant factor in the redivision of the parties' property and doctrine of unclean hands should not have been applied. *Estate of Houston v. Houston*, 31 Ark. App. 218, 792 S.W.2d 342 (1990).

Chancellor should not have considered the fact that wife's needs had diminished because of her death as a significant factor in redistributing the parties' property. *Estate of Houston v. Houston*, 31 Ark. App. 218, 792 S.W.2d 342 (1990).

### **Remarriage.**

Chancellor's finding that the parties intended to abrogate the property settlement which they had made in at the time of their first divorce upon their remarriage was not clearly erroneous; thus, all of the property involved in the first property settlement was marital property which was subject to an equal division at the time of their second divorce. *McMurtray v. McMurtray*, 275 Ark. 303, 629 S.W.2d 285 (1982).

Where parties had been married and divorced twice, it was not error for the chancellor to find that wife was entitled to some benefit by reason of marital funds having been used to pay off debts on two nonmarital farms; however, her interest should be limited to the amounts paid on the farms subsequent to the second marriage because she had been paid for her interest at the time of the first divorce. *Bagwell v. Bagwell*, 282 Ark. 403, 668 S.W.2d 949 (1984).

Where the parties settled the case after the trial had commenced and advised the chancellor of the terms of their property settlement as well as the terms of their alimony and child support settlement; but no formal agreement was dictated into the record, they did not state that they intended to create an independent contract

for alimony, and the chancellor did not treat it as an independent contract, the chancellor could modify the decree ten years later and cease payments as a result of the wife's remarriage. *Shipley v. Shipley*, 305 Ark. 257, 807 S.W.2d 915 (1991).

### **Res Judicata.**

This section contemplated a division of the husband's property when a decree of divorce was granted and that, if the wife failed to ask for and obtain the relief when the decree was granted, the matter became res judicata. *Taylor v. Taylor*, 153 Ark. 206, 240 S.W. 6 (1922).

Where husband and wife both sued for divorce and the wife asked for a division of the property the court should have heard the evidence and decided the question of property rights, but having failed to do so Supreme Court would affirm decree for the wife without prejudice to her right to maintain a suit for any interest she may have in property. *Parrish v. Parrish*, 195 Ark. 766, 114 S.W.2d 29 (1938).

Divorce decree was not res judicata of suit for possession of personal property. *Swanson v. Johnson*, 212 Ark. 349, 205 S.W.2d 702 (1947).

Denial of former wife's motion for a portion of her former husband's military retirement was proper because the parties had been divorced and their property had been divided in a final manner; thus, res judicata was applicable because the division of military retirement could have been litigated at the divorce hearing. *Foster v. Foster*, 96 Ark. App. 109, 239 S.W.3d 1 (2006).

### **Return of Nonmarital Property.**

If there is any deviation from returning nonmarital property to the original owner the reasons given by the trier of fact must be sufficiently specific. *Canady v. Canady*, 285 Ark. 378, 687 S.W.2d 833 (1985).

### **Sale of Lands.**

Where divorce is granted to wife and if it is necessary that real estate in which she was granted a life estate be sold, the value of the life estate should be ascertained and that amount turned over to the wife from the proceeds of the sale; it is improper to turn one-third of the proceeds over to the wife. *Allen v. Allen*, 126 Ark. 164, 189 S.W. 841 (1916).

Where husband had title to certain lands in fee and he and his wife had only

a life estate in other lands and lands were not susceptible of division in kind, it was proper to order the lands sold but it was error to direct the sale of the lands in *solido*. *Dowell v. Dowell*, 207 Ark. 578, 182 S.W.2d 344 (1944).

In a divorce settlement of property rights the trial court is not bound to order immediate sale of land purchased by the husband during coverture, so that it was not abuse of discretion where the court awarded exclusive possession of the land to the wife for three years subject to taxes and retained jurisdiction to effect sale of the property, division of proceeds and enforcement of property rights and alimony award. *Jarrett v. Jarrett*, 226 Ark. 933, 295 S.W.2d 323 (1956).

Tract of land which was purchased after 1947 but which formed only connection between tract of land purchased prior to 1947 and highway, would not be ordered sold by court, since both parcels should be handled together and land purchased prior to 1947 could not be sold. *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957).

Ex-husband's argument about the improper sale of the parties marital home under subdivision (a)(3)(B) of this section was not considered on appeal because he failed to object to such sale, thereby waiving the argument, and it was not a sufficiency of the evidence question under which the court could review the issue without an objection under Ark. R. Civ. P. 52(b)(2). *Roberts v. Yanyan Yang*, 102 Ark. App. 384, 285 S.W.3d 689 (2008).

### **Separate Property.**

Husband provided clear and convincing evidence that the checking account funds remained his separate property despite the account existing in both names. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

A home owned by the husband prior to the parties' marriage was his separate property where both parties owned homes prior to their marriage. *Dial v. Dial*, 74 Ark. App. 30, 44 S.W.3d 768 (2001).

In a dissolution of marriage case, the court properly awarded the interest in a condominium to the husband where: (1) the condominium was acquired by the sole contribution of the husband, (2) he was the only party at risk on the purchase of the condominium, (3) he did not use un-

disclosed marital funds to purchase the condominium, (4) he did not take title to it until after the divorce was final, and (5) he intended to use the condominium as his post-marital residence. *Page v. Anderson*, 85 Ark. App. 538, 157 S.W.3d 575 (2004).

In a divorce action, the trial court did not err under subdivision (a)(2) of this section in not awarding the husband an interest in properties that the wife owned prior to their marriage because the decree awarded the husband full ownership in an entity that was titled in both parties' names, and awarded him full ownership of an investment account that he created with pre-divorce income. *Ransom v. Ransom*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 427 (Apr. 15, 2009).

### **Social Security Benefits.**

State courts are without power to take any action to enforce a private agreement dividing future payments of Social Security benefits; such an agreement violates the federal statutory prohibition, 42 U.S.C. § 407(a), against transfer or assignment of future benefits. *Gentry v. Gentry*, 327 Ark. 266, 938 S.W.2d 231 (1997).

### **Tax Consequences.**

The tax consequences which subsequently evolve from a property division should not be permitted to operate inequitably, and where there were doubts as to fairness of imposition on husband of tax liability on sales of property, court should retain jurisdiction until tax results could be ascertained. *Bagwell v. Bagwell*, 282 Ark. 403, 668 S.W.2d 949 (1984).

Where there was no demonstrable federal income tax consequence resulting from the division of the property, the decree did not require a sale, and there was no evidence that a sale was imminent, the Chancellor erred in subtracting from the value of a business asset the amount of federal tax that would have to be paid in the event the asset were sold. *Grace v. Grace*, 326 Ark. 312, 930 S.W.2d 362 (1996).

### **Timing.**

A portion of a divorce decree which permitted a husband to delay payment of his wife's share of property until the sale of the home following their minor child's attaining majority or graduation from high school was not consistent with the



requirement of this section that property be distributed at the time the decree is entered; therefore, the decree was modified to require the husband to pay the wife's share within a reasonable period of time. *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982).

Where the parties in a divorce action specifically agreed that no property division was to be made at the time the limited divorce decree was entered, the trial court did not err in not ordering a property division at the time he granted the limited divorce, despite the language of this section to the effect that all marital property is to be distributed at the time the divorce decree is entered. *Forrest v. Forrest*, 279 Ark. 115, 649 S.W.2d 173 (1983).

It was not an abuse of the chancellor's discretion to ascertain the extent of marital property and evaluate it as of the date of the divorce. *Askins v. Askins*, 288 Ark. 333, 704 S.W.2d 632 (1986).

To the extent the Chancellor may have divided marital property as of the date the first divorce complaint was denied, it was error to do so; the marital property should have been divided and distributed at the time the divorce decree was entered as provided in subsection (a) of this section. *Hadden v. Hadden*, 320 Ark. 480, 897 S.W.2d 568 (1995).

The chancellor acted correctly in using the date of divorce, rather than the date of a remand hearing, as the date on which to value marital property. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001).

### **Tort Action.**

A spouse involved in a divorce, having a cause of action in tort against his or her spouse, is not required to bring that action in the divorce case and can pursue the claim in circuit court. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993).

### **Undue Influence.**

Record contained testimony that the ex-husband commanded a dominating influence over the ex-wife and that he badgered, threatened, and belittled her to accede to his demand for an interest in the ex-wife's property at a time when she was in a weakened condition, both physically and emotionally, due to the illness of her father and the death of her son; the trial court's findings of undue influence were

not clearly erroneous and the court affirmed the setting aside of the deed, and the court noted that a review of case law did not reveal any time restraints for seeking to set aside a transaction that was not freely made. *Young v. Young*, 101 Ark. App. 454, 278 S.W.3d 603 (2008).

### **Unequal Division.**

Trial judge did not abuse its discretion in denying the husband's request for an unequal division of the marital property in his favor and instead, distributing the marital property unevenly in the wife's favor because this section did not compel mathematical precision in the distribution of property; this section simply required that marital property be distributed equitably and the trial judge could consider whether the parties to the divorce needed to use marital funds to meet necessary expenses incurred during the pendency of the action, and whether the amount used was reasonable, whether fraud or overreaching occurred, and whether an offset was appropriate. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Circuit court did not err in unequally dividing the stock proceeds where the order showed that both the length of the marriage and the contribution of the parties to the acquisition of the stock proceeds formed the basis for its decision to divide the property unequally; the lower court was not required to list all the factors and was entitled to weigh the factors differently in reaching its decision. *Hernandez v. Hernandez*, 371 Ark. 323, 265 S.W.3d 746 (2007).

Trial court properly considered the factors in this section when it declined to award a former wife an unequal division of marital property because the wife had deposited her large personal injury settlement into a joint account, and she used the proceeds to make purchases of property titled in both parties' names. Moreover, equity did not compel a different result since the wife used the proceeds to purchase non-essential items, despite knowing that she was uninsurable and that she had suffered business losses over the past three years. *Singleton v. Singleton*, 99 Ark. App. 371, 260 S.W.3d 756 (2007).

Circuit court, in reaching a determination as to the equitable division of marital



property under subdivision (a)(1)(A) of this section, was free to consider the husband's interest in the limited partnership, and his opportunity to double the size of his estate upon the death of his mother, and the limitation on the husband's interest in the partnership, in the form of the usufruct, was of no relevance, as the opportunity to add to his estate was a proper consideration. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008).

Trial court considered the factors in subdivision (a)(1)(A) of this section in making an unequal distribution of marital assets, and while the ex-husband was correct that simply reciting the statutory factors did not satisfy the requirement of the statute, the trial court covered this issue in detail in its oral ruling from the bench, and this met the requirements of the statute. *Young v. Young*, 101 Ark. App. 454, 278 S.W.3d 603 (2008).

Trial court did not err by considering the husband's actions in making an unequal division of marital property, because the trial court considered the wife's diminished state of health after the husband shot her and found that the husband's violent attack left the wife without the ability to earn a living, and the husband dissipated marital assets by twice setting fire to the marital home and by transferring items of marital property, namely the tractor and vehicle, to the parties' son. *Frost v. Frost*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 472 (Apr. 15, 2009).

#### —In General.

Where chancellor's order said alimony award was not a distribution of marital property or given in lieu of such a distribution, but it then referred to the discrepancy in income which would result from the difference in profit potential between two properties, reversal of the award gave the chancellor appropriate flexibility in reconsidering the distribution of marital property, if he chose to do so, rather than readopt the unequal distribution with an explanation as this section requires. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988).

Where the chancellor awarded wife a share of various retirement benefits of husband, but stated that if she predeceased husband her share was to revert back to the husband, in effect, she was

given only a life estate in the benefits, but there was no error in awarding such a life estate as part of an unequal distribution. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988).

#### —Factors Considered.

The specific enumeration of certain factors for the chancellor to consider in distributing the marital property other than equally should not prevent consideration of the fact that one spouse has been convicted of conspiring to kill the other. *Stover v. Stover*, 287 Ark. 116, 696 S.W.2d 750 (1985).

The fact that this section provides that the increase in value of property acquired by one party prior to the marriage is nonmarital property does not mean that the chancellor must award the entire amount of the increase to the party that acquired the property prior to the marriage; instead, subdivision (a)(2) of this section expressly provides that the court may make some other division that it deems equitable. If the trial court does determine that it is equitable to divide nonmarital property between the parties, however, this section requires that the court take into consideration those factors listed in subdivision (a)(1)(A) of this section and that the court state in writing its reasons. *Yockey v. Yockey*, 25 Ark. App. 321, 758 S.W.2d 421 (1988).

Support of an adult, college student child does not fall directly within any of the nine items listed in this section to be considered in reaching an unequal distribution of a marital asset. *Hadden v. Hadden*, 320 Ark. 480, 897 S.W.2d 568 (1995).

In a divorce case, the trial court did not err in the division of the couple's property; the wife was awarded the entire value of her retirement account and one-half of her husband's business interests due to her husband's superior earning ability. *Delacey v. Delacey*, 85 Ark. App. 419, 155 S.W.3d 701 (2004).

#### —Motor Vehicles.

There was no error in the chancellor's decision awarding to wife a vehicle that was debt-free, while awarding to husband a vehicle with indebtedness; this section does not compel mathematical precision in property distribution, only that marital property be distributed equitably. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

**—Reversed.**

A division of marital property was improper and would be reversed where the chancellor intended to divide the property 60/40, but the actual division was much more unequal because he failed to reduce the worth of a business awarded to the husband by a substantial debt owed to a bank and because he arbitrarily added a 50 percent enhancement to the value of the business. *Hoover v. Hoover*, 70 Ark. App. 215, 16 S.W.3d 560 (2000).

**—Statement of Reasons.**

Appellate court would not review the alleged trial court error in the division of the marital property until the trial court complied with the requirement to state the basis and reasons for not dividing the property equally. *Davis v. Davis*, 270 Ark. 180, 603 S.W.2d 900 (Ct. App. 1980).

Where an equal division of property was made, there was no necessity for the chancellor to state his reasons for not so dividing the property. *Ausburn v. Ausburn*, 271 Ark. 330, 609 S.W.2d 14 (1980).

Where the trial court failed to provide any reasons in its order dividing the marital property that indicated the bases for awarding the former wife's one-fourth marital property interest in a partnership to her former husband, and there was nothing in the record which showed that the former wife received anything in return for the partnership interest taken from her by the court, the former wife's one-fourth interest in the partnership would be reinstated. *Glover v. Glover*, 4 Ark. App. 27, 627 S.W.2d 30 (1982).

Any exception to the rule of equal distribution will always depend upon the specific facts as reflected by the trial court's findings and conclusions. *Gentry v. Gentry*, 282 Ark. 413, 668 S.W.2d 947 (1984); *Cavin v. Cavin*, 308 Ark. 109, 823 S.W.2d 843 (1992).

If the chancellor had specific reasons for not equally dividing the parties' marital savings, he failed to state those reasons in compliance with this section. *Duncan v. Duncan*, 11 Ark. App. 25, 665 S.W.2d 893 (1984).

The trial court sufficiently stated its reasons for an unequal distribution of the parties' premarital and marital property pursuant to the issuance of a divorce decree. *Pennybaker v. Pennybaker*, 14 Ark. App. 251, 687 S.W.2d 524 (1985).

Where appellant maintained that there was an unequal division of marital property and that the court failed to state the basis for the unequal division, the burden was upon the appellant to bring up a record sufficient to demonstrate that the trial court was in error. *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986).

Where the trial court failed to award wife her interest in two notes which husband owned or in which he had an ownership interest, and wife clearly had a right to her marital interest in those notes, the trial court should have given its basis and reasons for not having awarded her one-half interest pursuant to subdivision (a)(1) of this section; therefore, the trial court's action was reversed. *Allen v. Allen*, 17 Ark. App. 38, 702 S.W.2d 819 (1986).

Where chancellor stated that he found an unequal division to be "appropriate" rather than "equitable," the appellate court could find no such significance in his choice of words and could not say that the chancellor's findings that the circumstances warranted an unequal division of property were clearly erroneous. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988).

Where the trial court allowed wife to keep investment accounts as the wife's sole and separate property because they were from her sole earnings, while some evidence may have supported an unequal division of marital property, the trial judge failed to state reasons in the written order supporting the unequal division; the written order listed the factors to be considered such as length of marriage and the age and health of the parties, however, the order failed to include findings explaining why such factors supported an unequal division of marital property and reversal and remand was required. *Baxley v. Baxley*, 86 Ark. App. 200, 167 S.W.3d 158 (2004).

**—Tax Consequences.**

The court rejected the husband's argument that the chancellor found the marital property to be unequally divided but failed to take tax consequences into account; although the chancellor declined to require the wife to share in the tax consequences, neither the court's findings nor its order reflected that the chancellor failed to consider such tax consequences; rather, they reflected only that he decided



that the wife did not have to share in them. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001).

#### —Upheld.

Where the trial judge, in a divorce action, based the unequal property distribution upon the fact that the husband was blind and unemployable, while the wife was employable and had always worked outside the home, and the judge further found that the wife had not contributed to the home expenses or payments and had not used her money for the family's benefit, the evidence supported unequal division of property. *Forsgren v. Forsgren*, 4 Ark. App. 286, 630 S.W.2d 64 (1982); *Cantrell v. Cantrell*, 10 Ark. App. 357, 664 S.W.2d 493 (1984).

The wife was properly awarded more than half of the marital estate where (1) the parties were married for 17 years, (2) the husband earned significantly more money than did the wife, and (3) the husband was vested one-third beneficiary of an undistributed trust worth \$250,000, and was the sole heir to his mother's one-million-dollar estate. *Atkinson v. Atkinson*, 72 Ark. App. 15, 32 S.W.3d 41 (2000).

This section does not apply to the division of marital debts and there is no presumption that an equal division of debts must occur; thus, where the parties had only a brief marriage and the wife plainly had preexisting medical bills, her failure to present testimony or medical bills indicating which bills were incurred after the parties married justified the trial court's decision that the husband was not responsible for a portion of those bills. *Weatherly v. Weatherly*, 87 Ark. App. 291, 190 S.W.3d 294 (2004).

#### Waiver.

Wife waived any rights she may have had in retirement fund by failing either to assert those rights in divorce action or to appeal from court's failure to effect the statutorily mandated property division in the divorce decree. *Mitchell v. Meisch*, 22 Ark. App. 264, 739 S.W.2d 170 (1987);

*Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

**Cited:** *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944); *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781 (1957); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *White v. White*, 228 Ark. 732, 310 S.W.2d 216 (1958); *Horn v. Horn*, 232 Ark. 723, 339 S.W.2d 852 (1960); *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965); *Ashley v. Eisele*, 247 Ark. 281, 445 S.W.2d 76 (1969); *Walker v. Walker*, 248 Ark. 93, 450 S.W.2d 1 (1970); *Law v. Law*, 248 Ark. 894, 455 S.W.2d 854 (1970); *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Pendergist v. Pendergist*, 267 Ark. 1114, 593 S.W.2d 502 (1980); *Godwin v. Godwin*, 268 Ark. 364, 596 S.W.2d 695 (1980); *Barron v. Barron*, 1 Ark. App. 323, 615 S.W.2d 394 (1981); *Pinkston v. Pinkston*, 278 Ark. 233, 644 S.W.2d 930 (1983); *Mitchell v. Mitchell*, 278 Ark. 619, 648 S.W.2d 51 (1983); *Wagh v. Wagh*, 7 Ark. App. 122, 644 S.W.2d 630 (1983); *Coleman v. Coleman*, 7 Ark. App. 280, 648 S.W.2d 75 (1983); *Callaway v. Callaway*, 8 Ark. App. 129, 648 S.W.2d 520 (1983); *Boyle v. Donovan*, 724 F.2d 681 (8th Cir. 1984); *Bennett v. McGough*, 281 Ark. 414, 664 S.W.2d 476 (1984); *Carrick v. Carrick*, 13 Ark. App. 42, 679 S.W.2d 800 (1984); *Woods v. Woods*, 285 Ark. 175, 686 S.W.2d 387 (1985); *Farris v. Farris*, 287 Ark. 479, 700 S.W.2d 371 (1985); *Glover v. Glover*, 15 Ark. App. 79, 689 S.W.2d 592 (1985); *Potter v. Easley*, 288 Ark. 133, 703 S.W.2d 442 (1986); *Harvey v. Harvey*, 298 Ark. 308, 766 S.W.2d 935 (1989); *Layman v. Layman*, 300 Ark. 583, 780 S.W.2d 560 (1989); *Crowder v. Crowder*, 303 Ark. 562, 798 S.W.2d 425 (1990); *Nowell v. Nowell*, 31 Ark. App. 78, 787 S.W.2d 698 (1990); *Bolan v. Bolan*, 32 Ark. App. 65, 796 S.W.2d 358 (1990); *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996); *Grider v. Grider*, 62 Ark. App. 99, 968 S.W.2d 653 (1998); *Dunavant v. Dunavant*, 66 Ark. App. 1, 986 S.W.2d 880 (1999).

### 9-12-316. Property settlements.

In any divorce suit in which a written property settlement involving real property is entered into by the parties and reference is made to the settlement in the divorce decree, a copy of that portion of the property



settlement involving real property shall be filed and recorded with the divorce decree.

**History.** Acts 1969, No. 398, § 2; A.S.A. 1947, § 34-1214.1.

### RESEARCH REFERENCES

**A.L.R.** Divorce decree or settlement agreement as affecting divorced spouse's right to recover as named beneficiary on former spouse's individual retirement account. 99 A.L.R.5th 637.

Division of lottery proceeds in divorce

proceedings. 124 A.L.R.5th 537.

Spouse's professional degree or license as marital property for purposes of alimony, support, or property settlement. 3 A.L.R.6th 447.

### CASE NOTES

#### ANALYSIS

Independent Contract.  
Modification.

#### Independent Contract.

Wording of the property settlement agreement and the actions of the parties at the time of the divorce clearly showed that the parties intended to have an independent contract. *Kennedy v. Kennedy*, 53 Ark. App. 22, 918 S.W.2d 197 (1996).

#### Modification.

Chancery court did not have authority to modify alimony payments when the

alimony provision was part of the parties' written agreement, which was an independent contract between the parties; the decree of alimony was based on a property settlement agreement between the parties which was incorporated in the decree and approved by the court as an independent contract, but did not merge into the court's award and was not subject to modification except by consent of the parties. *Kennedy v. Kennedy*, 53 Ark. App. 22, 918 S.W.2d 197 (1996).

### 9-12-317. Dissolution of estates by the entirety or survivorship.

(a) Hereafter, when any circuit court in this state renders a final decree of divorce, any estate by the entirety or survivorship in real or personal property held by the parties to the divorce shall be automatically dissolved unless the court order specifically provides otherwise, and in the division and partition of the property, the parties shall be treated as tenants in common.

(b) Notwithstanding subsection (a) of this section or any other law to the contrary, when one (1) of the parties to the estate by the entirety has been found guilty or has pleaded guilty or nolo contendere to a felony during the marriage and within three (3) years of filing the complaint for divorce and the other party to the divorce did not benefit from the felony, the circuit judge may award the property to the spouse who did not commit the felony or to both parties in any proportion deemed equitable by the circuit judge.

(c) However, when a circuit court in this state renders an absolute divorce from the bonds of matrimony or a divorce from bed and board, and the court dissolves estates by the entirety or survivorship in real or personal property under this section, the court may distribute the

property as provided in § 9-12-315. The court shall set forth its reasons in writing in the decree for making an other than equal distribution to each party, when all the property is considered together, taking into account the factors enumerated in § 9-12-315(a)(1).

**History.** Acts 1947, No. 340, § 1; 1975, No. 457, § 1; A.S.A. 1947, § 34-1215; Acts 1991, No. 1160, § 1; 1997, No. 1119, § 1.

**Cross References.** Petition for partition of estate by entirety by divorced persons, § 18-60-401.

## RESEARCH REFERENCES

**Ark. L. Rev.** Acts of 1947: Partition of Estates by Entirety, 1 Ark. L. Rev. 220.

Tenancy by the Entirety — Divorce — A Peculiar Rule of Property in Arkansas, 22 Ark. L. Rev. 386.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law: Family Law, 6 U. Ark. Little Rock L.J. 159.

Harris, the Arkansas Marital Property Statute and the Arkansas Appellate

Courts: Tiptoeing Together Through the Tulips, 7 U. Ark. Little Rock L.J. 1.

Arkansas Law Survey, Schneider, Decedents' Estates, 7 U. Ark. Little Rock L.J. 205.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

## CASE NOTES

### ANALYSIS

In General.

Applicability.

Adverse Possession.

Death of Party.

Disposition of Property.

Final Decree of Divorce.

Foreign Law.

Fraud.

Presumption.

Property Settlement.

Remarriage.

Rent.

Repairs.

Retroactive Effect.

Withdrawal of Funds.

### In General.

It is automatic that an estate by the entirety is changed to one in common unless the court decrees otherwise. *Villanova v. Pollock*, 264 Ark. 912, 576 S.W.2d 501 (1979).

Acts 1979, No. 705, which amended § 9-12-315, did not abolish this section; accordingly, § 9-12-315 does not apply to property owned as tenants by the entirety. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981).

This section is the only authority for dividing estates by the entirety, and it

provides for the equal division of property without regard to gender or fault. *Askins v. Askins*, 5 Ark. App. 64, 632 S.W.2d 249 (1982); *Warren v. Warren*, 11 Ark. App. 58, 665 S.W.2d 909 (1984).

Where parties' residence is held as a tenancy by the entirety, that estate is automatically dissolved when the final decree is rendered, unless the chancellor specifically provided otherwise, pursuant to this section. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

Marital residence was owned by the husband and wife as tenants by the entirety, and thus, the circuit court had the option of disposing of the property in the manner required for the distribution of marital property, one-half to each party unless such a division would be inequitable; the circuit court adequately set forth its reasons for the unequal division of the property, and was not required to provide reasons specific to the marital residence, but rather to provide reasons for the unequal division when all the property is considered together, under subsection (c) of this section. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008).

### Applicability.

This section applies only where a valid estate by the entirety has been created

and has no application where one of the parties fraudulently causes his name to be added to the deed. *Johnson v. Johnson*, 237 Ark. 311, 372 S.W.2d 598 (1963).

Under this section this limited power of chancery courts to dissolve estates by the entirety is confined to cases involving a divorce. *Bebout v. Bebout*, 241 Ark. 291, 408 S.W.2d 480 (1966).

The division of property held as tenants by the entirety is governed by this section rather than § 9-12-315; this section is the only statutory authority for the division of tenancies by the entirety, and it provides for an equal division of such property without regard to gender or fault. *Lyle v. Lyle*, 15 Ark. App. 202, 691 S.W.2d 188 (1985).

### **Adverse Possession.**

Where an estate by the entirety could not be divided by the court prior to the enactment of this section, one of the owners could not claim adverse possession where the other owner quit living on the property following the divorce of the owners by the entirety. *Hubbard v. Hubbard*, 251 Ark. 465, 472 S.W.2d 937 (1971).

### **Death of Party.**

Where action regarding property rights had been taken under submission and not finally decided by the chancellor when the death of the husband caused the action to abate, the nunc pro tunc divorce order rendered after the property aspects were submitted but before they were finally decided and before the death was of no effect. *Pendergist v. Pendergist*, 267 Ark. 1114, 593 S.W.2d 502 (1980), superseded by statute as stated in, *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989).

Where a divorce proceeding was pending between couple at time of husband's death and, upon the rendition of a divorce in that action, their estate by the entirety would have dissolved automatically and they would have become tenants in common, court correctly held that husband's estate was entitled to his share of proceeds from sale of the property. *Rucks v. Taylor*, 10 Ark. App. 195, 662 S.W.2d 199 (1983), *aff'd*, 282 Ark. 200, 667 S.W.2d 365 (1984).

### **Disposition of Property.**

Where husband and wife owned home as tenants by the entirety, the home was

properly ordered sold with the proceeds to be divided equally upon granting of divorce to wife. *Carr v. Carr*, 226 Ark. 355, 289 S.W.2d 899 (1956) (decision prior to 1975 amendment).

Upon divorce, property held as a tenancy by the entirety is treated as a tenancy in common, and the court may place one of the parties in possession or may order the property sold and the proceeds divided; however, the court exceeded its authority by directing husband to give his divorced wife a quitclaim deed to his interest. *Yancey v. Yancey*, 234 Ark. 1046, 356 S.W.2d 649 (1962) (decision prior to 1975 amendment).

Where promissory notes were entireties property, it was error for the court to award the husband a greater share of the notes than the wife as a means of equalizing differences in value of real property awarded the parties. *Ramsey v. Ramsey*, 259 Ark. 16, 531 S.W.2d 28 (1975) (decision prior to 1975 amendment).

Trial court erred when it awarded land, held in tenancy by the entirety to husband as his separate property upon the dissolution of their marriage; the court, in dividing the property, should have treated the husband and wife as tenants in common of that land. *Askins v. Askins*, 5 Ark. App. 64, 632 S.W.2d 249 (1982).

In divorce action, the chancellor's action in placing wife in possession of the parties' house was certainly authorized under this section and was not clearly against the preponderance of the evidence. *Wagh v. Wagh*, 7 Ark. App. 122, 644 S.W.2d 630 (1983).

Where there was no evidence that wife, who advanced consideration for property purchased during marriage, expected it to be held in a resulting trust, the chancellor erred in awarding wife an equitable lien against husband's one-half interest in the property. *Warren v. Warren*, 11 Ark. App. 58, 665 S.W.2d 909 (1984).

Where the husband and wife acquired a one-half interest by deed as tenants by the entirety, the trial court, pursuant to this section, properly converted this one-half interest held as tenants by the entirety into two one-quarter interests held as tenants in common. *Farris v. Farris*, 287 Ark. 479, 700 S.W.2d 371 (1985).

A court has two available options for dealing affirmatively with entireties property in the event of the dissolution of the



entireties estate by divorce: it may place one of the parties in possession of the property, or it may order the property sold and the proceeds divided equally. Awarding marital property held as tenancies by entireties solely to wife as part of her half-share of the marital property was error. *Leonard v. Leonard*, 22 Ark. App. 279, 739 S.W.2d 697 (1987).

The chancellor exceeded his authority in awarding real property, held as a tenancy by the entirety, to the plaintiff, and in ordering the defendant to execute a deed to the plaintiff. *Bradford v. Bradford*, 34 Ark. App. 247, 808 S.W.2d 794 (1991).

Where wife's inheritance was used to purchase stocks, bonds, and securities, the court was wrong to hold these were her separate property for division purposes where: (1) the parties filed joint income tax returns throughout the time that they were married, and that those returns listed the income and dividends from the investments as joint property; (2) the wife considered the property "all for one and one for all"; (3) it was a relatively long period of time that the separate funds were commingled in the joint account; and (4) marital funds derived from the husband's paycheck were used to meet the tax consequences stemming from ownership of the stocks, bonds, and securities at issue. *McLain v. McLain*, 36 Ark. App. 197, 820 S.W.2d 295 (1991).

In a divorce action, the trial court erred by awarding the marital residence and its corresponding debt to the former wife, because under subsection (a) of this section the trial court was only authorized to order the property sold, give wife possession of the property until it would be sold at some future time, or leave the parties as tenants in common. *Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003).

### **Final Decree of Divorce.**

The General Assembly intended "final decree of divorce" to refer to an absolute divorce from the bonds of matrimony for purposes of dissolving a tenancy by the entirety, by operation of law. *Jones v. Earnest*, 307 Ark. 294, 819 S.W.2d 280 (1991).

A divorce from bed and board does not constitute a final decree of divorce under subsection (a) of this section. *Jones v. Earnest*, 307 Ark. 294, 819 S.W.2d 280 (1991).

Upon divorce, the operation of law made ex-husband and ex-wife tenants in com-

mon as to their home; thus, upon ex-wife's creditors' attempt to attach a judgment lien, ex-husband was not barred from asserting the homestead exemption over ex-wife's undivided one-half-interest in the property. *Parker v. Johnson*, 368 Ark. 190, 244 S.W.3d 1 (2006).

### **Foreign Law.**

Where divorce granted by court in another state, such court could order conveyance of lands held as tenancy by entireties. *Phillips v. Phillips*, 224 Ark. 225, 272 S.W.2d 433 (1954) (decision prior to 1975 amendment).

Where wife obtained valid divorce out of state, real property held by the couple in Arkansas as tenancy by the entirety should be converted to a tenancy in common and the proceeds of sale divided equally and husband was not entitled to claim the property as his homestead even though he occupied it as his home. *Rodgers v. Rodgers*, 271 Ark. 762, 611 S.W.2d 175 (1981).

### **Fraud.**

Chancery court did not need to cause estate by entirety to be sold and the proceeds divided where estate brought about by fraud. *Johnson v. Johnson*, 237 Ark. 311, 372 S.W.2d 598 (1963) (decision prior to 1975 amendment).

This section has no application where one of the parties fraudulently causes his or her name to be added to the deed. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981).

### **Presumption.**

Once property, whether personal or real, is placed in the names of persons who are husband and wife, without specifying the manner in which they take, there is a presumption that they own the property as tenants by the entirety and it takes clear and convincing evidence to overcome that presumption. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988); *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988); *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996).

### **Property Settlement.**

Property settlement resulting from a divorce decree wherein parties agreed to sell land held as tenants by the entirety and divide the proceeds did not dissolve the estate by the entireties and create

tenancy in common. *Killgo v. James*, 236 Ark. 537, 367 S.W.2d 228 (1963) (decision prior to 1975 amendment).

Chancellor erred in his disposition of married couple's jointly owned four pieces of property held as tenants by the entirety by giving two lots to each spouse; the parties should hold all four lots as tenants in common. *White v. White*, 50 Ark. App. 240, 905 S.W.2d 485 (1995).

### **Remarriage.**

Where wife was given possession of property held by the entireties by way of maintenance in divorce action and wife then remarried, the court held she was no longer entitled to exclusive possession of the estate by the entirety and chancellor had jurisdiction to change the order providing for maintenance. *Perry v. Perry*, 229 Ark. 202, 313 S.W.2d 851 (1958).

### **Rent.**

Where the divorce decree provided title to the residence be held as a tenancy in common, the chancellor erred in holding the wife liable for rental fees from the time she lived in the house, after the contingency was met, requiring the house to be sold. *Clifton v. Clifton*, 34 Ark. App. 280, 810 S.W.2d 51 (1991).

### **Repairs.**

Where divorced parties held property as tenants in common, and the chancellor did not find repairs by the wife added any significant value to the property, or that they were permanent in character such that the property would have an enhanced permanent value, the award of actual costs of the repairs to the wife was wrong since when the property was sold, the net proceeds were to be divided evenly between the parties. *Clifton v. Clifton*, 34 Ark. App. 280, 810 S.W.2d 51 (1991).

### **Retroactive Effect.**

Court cannot change estate in entirety to estate in tenancy in common, if estate in entirety became vested prior to March 28, 1947. *Jenkins v. Jenkins*, 219 Ark. 219, 242 S.W.2d 124, 27 A.L.R.2d 861 (1951); *Meadows v. Costoff*, 221 Ark. 561, 254 S.W.2d 472 (1953); *Anderson v. Walker*, 228 Ark. 113, 306 S.W.2d 318 (1957); *Perry v. Perry*, 229 Ark. 202, 313 S.W.2d 851 (1958) (decisions prior to 1975 amendment).

Property acquired subsequent to March 28, 1947 may be sold on order of the court

while property acquired prior thereto can only be sold by the mutual consent of the parties. *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957) (decision prior to 1975 amendment).

This section does not act retroactively and does not apply to entirety estates created prior to March 28, 1947. *Poskey v. Poskey*, 228 Ark. 1, 305 S.W.2d 326 (1957) (decision prior to 1975 amendment).

A holding that entirety property acquired before March 28, 1947 should be continued to be held and managed by the husband, granted a divorce on grounds of the wife's insanity, was proper where the husband was required to pay half the net income to the guardian of his divorced wife. *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965) (decision prior to 1975 amendment).

Where property was purchased as an estate by the entirety, prior to March 28, 1947, the court in a subsequent divorce could not dissolve the estate by the entirety even if a division had been sought in the divorce proceeding. *Hubbard v. Hubbard*, 251 Ark. 465, 472 S.W.2d 937 (1971).

In partition action, chancellor held that the interest of the parties in real property had automatically been changed upon their divorce from tenants by the entirety to tenants in common even though property was bought prior to 1975 amendment, which made dissolution of estates by the entirety automatic. *Padgett v. Haston*, 279 Ark. 367, 651 S.W.2d 460 (1983).

### **Withdrawal of Funds.**

Funds withdrawn from savings account held as tenancy by the entirety in contemplation of divorce should have been divided pursuant to this section. Likewise, funds withdrawn from money market account held as tenants by the entirety and deposited into wife's separate account should have been divided under this section. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988).

Where spouse withdrew funds from a joint account for living expenses, while the divorce was pending, and there was no finding of fraud or overreaching, the court could impose a constructive trust, order an accounting, or order an offset. *Guinn v. Guinn*, 35 Ark. App. 199, 816 S.W.2d 629 (1991).

**Cited:** *Price v. Price*, 217 Ark. 6, 228 S.W.2d 478 (1950); *Young v. Young*, 222



Ark. 827, 262 S.W.2d 914 (1953); *Harbour v. Harbour*, 229 Ark. 198, 313 S.W.2d 830 (1958); *Brown v. Brown*, 233 Ark. 422, 345 S.W.2d 27 (1961); *McIntyre v. McIntyre*, 241 Ark. 623, 410 S.W.2d 117 (1967); *Brown v. Brown*, 263 Ark. 189, 563 S.W.2d 444 (1978); *May v. May*, 267 Ark. 27, 589 S.W.2d 8 (1979); *Ausburn v. Ausburn*, 271 Ark. 330, 609 S.W.2d 14 (1980); *Bramlett v. Bramlett*, 5 Ark. App. 217, 636 S.W.2d 294 (1982); *Cook v. Lobianco*, 8 Ark. App. 60, 648 S.W.2d 808 (1983); *Perrin v. Perrin*, 9 Ark. App. 170, 656 S.W.2d 245 (1983); *Luecke v. Mercantile Bank*, 286 Ark. 304, 691 S.W.2d 843 (1985); *Flucht v. Villareal*, 28 Ark. App. 1, 770 S.W.2d 187 (1989); *Crowder v. Crowder*, 303 Ark. 562, 798 S.W.2d 425 (1990).

### 9-12-318. Restoration of name.

In all cases when the court finds that either party is entitled to a divorce, the court may restore the wife to the name that she bore previous to the marriage dissolved.

**History.** Civil Code, § 462; C. & M. 1947, No. 16, § 1; 1981, No. 302, § 1; Dig., § 3512; Pope's Dig., § 4394; Acts A.S.A. 1947, § 34-1216.

### CASE NOTES

**Cited:** *Perrin v. Perrin*, 9 Ark. App. 170, 656 S.W.2d 245 (1983).

### 9-12-319. Nonresident defendants — Warning orders — Entry of decree.

In all divorce actions pending or filed in any of the circuit courts of this state where a warning order has been published against the defendant, who is a nonresident of this state, for the time and in the manner fixed by law and proof of publication has been filed with the clerk of the circuit court, and where the report or response of the attorney ad litem appointed for the nonresident has been filed with the clerk of the court, and no answer or other defense has been filed in the circuit court by the nonresident defendant, the judge of the circuit court upon submission of the cause to him or her in his or her chambers, or at any other place in his or her district by the attorney for the plaintiff, shall hear and enter a decree in the cause that shall have the same binding force and effect, both in law and equity, as if entered in term time in the county where the decree is filed.

**History.** Acts 1959, No. 39, § 1; A.S.A. 1947, § 34-1219.

### 9-12-320. Proceedings subsequent to decree — Change of venue.

(a)(1) The court where the final decree of divorce is rendered shall retain jurisdiction for all matters following the entry of the decree.

(2)(A)(i) Either party, or the court on its own motion, may petition the court that granted the final decree to request that the case be transferred to another county in which at least one (1) party resides if, more than six (6) months subsequent to the final decree:



(a) Both of the parties to the divorce proceedings have established a residence in a county of another judicial district within the state; or

(b) One (1) of the parties has moved to a county of another judicial district within the state and the other party has moved from the State of Arkansas.

(ii) The decision to transfer a case is within the discretion of the court where the final decree of divorce was rendered.

(B) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(C) In cases in which children are involved and a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the custodial parent.

(D) Justification for transfer of a case may be based on the establishment of residence by both parties in a county or state other than the county where the final decree of divorce was rendered.

(b) If the court that granted the final decree agrees to transfer the case to another judicial district, the court shall enter an order transferring the case and charging the circuit clerk of the court of original jurisdiction to transmit forthwith certified copies of all records pertaining to the case.

(c) Subsequent to the transfer to a county in another judicial district, if the party residing in the county to which the case has been transferred removes from that county or from the State of Arkansas, the case shall be transferred back to the county of original jurisdiction or the county of residence of the party still residing in the State of Arkansas.

(d) The provisions of this section shall not repeal any laws or parts of laws in effect on March 3, 1975, relating to venue for divorce actions, but shall be supplemental thereto.

**History.** Acts 1975, No. 297, §§ 1, 2; § 1; 1999, No. 1491, § 1; 2001, No. 1231, A.S.A. 1947, §§ 34-1204.1, 34-1204.1n; § 1.  
Acts 1989, No. 184, § 1; 1999, No. 539,

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

## CASE NOTES

### ANALYSIS

Applicability.  
Substantial Compliance.

### Applicability.

Venue, under this section, refers only to those subsequent proceedings involving

the two divorced parties and fails to embrace actions filed by third parties such as grandparents. *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

Under the language of § 9-13-103(a)(1) and (c), grandparents are afforded the separate right to file for visitation rights with their grandchildren in situations

where the child's parents are divorced, legally separated, or when a parent has died. Section 9-13-103 contains no restrictive language that would require grandparents to file their visitation action in a divorce action filed previously by the child's parents. In fact, this section, the venue statute concerning subsequent proceedings in divorce actions, would be wholly inapplicable where the grandparents' action is precipitated because their son or daughter died and the surviving,

but not divorced, parent denied them access to their grandchild. *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

#### **Substantial Compliance.**

To effect a change of venue for related proceedings subsequent to a divorce decree, there must be compliance with subsection (a) of this section. *Chappell v. McMillan*, 296 Ark. 317, 756 S.W.2d 895 (1988).

**Cited:** *White v. Winston*, 302 Ark. 345, 789 S.W.2d 459 (1990).

### **9-12-321. Annulment of decree of divorce.**

The proceedings for annulling a final judgment for a divorce from the bond of matrimony shall be a joint petition of the parties, verified by both parties in person, filed in the court rendering the judgment, upon which the court may forthwith annul the divorce.

**History.** Civil Code, § 463; C. & M. Dig., § 3513; Pope's Dig., § 4395; A.S.A. 1947, § 34-1217.

#### **CASE NOTES**

##### **Discretion of Court.**

By the use of the word "may" in this section it is clear that the chancery court has discretionary powers in considering a

petition for annulment of a divorce. *Dunn v. Dunn*, 222 Ark. 85, 257 S.W.2d 283 (1953).

### **9-12-322. Divorcing parents to attend parenting class.**

(a) When the parties to a divorce action have minor children residing with one (1) or both parents, the court, prior to or after entering a decree of divorce, may require the parties to:

(1) Complete at least two (2) hours of classes concerning parenting issues faced by divorced parents; or

(2) Submit to mediation in regard to addressing parenting, custody, and visitation issues.

(b) Each party shall be responsible for his or her cost of attending classes or mediation.

(c) The parties may:

(1) Choose a mediator from a list provided by the judge of those mediators who have met the Arkansas Alternative Dispute Resolution Commission's requirement guidelines for inclusion on a court-connected mediation roster; or

(2) Select a mediator not on the roster, if approved by the judge.

(d) A party may move to dispense with the referral to mediation for good cause shown.

**History.** Acts 1999, No. 704, § 1; 2001, No. 198, § 1.

### RESEARCH REFERENCES

**Ark. L. Notes.** Flaccus, Post Divorce and Children at Risk, 2008 Ark. L. Notes Fighting — Can It Be Predicted? Divorce 17.

#### 9-12-323. Joint credit card accounts.

(a)(1) After a court has determined or approved a property settlement agreement establishing the party responsible for any joint credit card account debt in a divorce action maintained or being maintained in the courts of this state, the nonresponsible party may notify the issuer of the credit card of the court order by sending a written notice containing the account name and account number of the joint credit card accompanied by a certified copy of the court order and property settlement agreement, if any, by certified mail, return receipt requested to:

(A) The address that the issuer has designated for making payments on the credit card account; or

(B) The customer service address provided by the issuer.

(2) On the date the notice is processed by the issuer of the credit card, not later than the fourth business day after receipt of the notice by the issuer, the nonresponsible party shall not be liable for any new charges on the credit card, other than charges made by the nonresponsible party, but shall remain liable for the balance due prior to the date the issuer processes the notice and all interest and late fees accrued or thereafter accruing on the balance.

(b)(1) The issuer of the credit card shall:

(A) Provide the nonresponsible party with written notification of the credit card account balance as of the date of processing the notice;

(B) Remove the nonresponsible party as an authorized user of the credit card account;

(C) Either cancel the credit card or suspend the effectiveness of the credit card for a period not exceeding thirty (30) days to allow the issuer to evaluate any request by the responsible party to continue the account as a separate credit card account of the responsible party; and

(D) Apply all payment made after the date of processing the notice:

(i) First to any fees assessed against the account;

(ii) Next to the accrued interest;

(iii) Next to the principal of the debt existing on the date of processing the notice; and

(iv) Finally to the principal of any debt incurred after the date of the processing of the notice.

(c)(1) This section does not prohibit the issuer of the credit card from issuing a new credit card to the responsible party.



(2) If as a result of receiving the notice under this section, a new credit card is issued in the name of the responsible party, the issuer may:

(A) Transfer the outstanding debt to the new credit card account for which the responsible party is solely responsible; or

(B) Issue the new credit card with a zero (\$0.00) balance and allow no new charges on the original credit card account, and both parties who are the obligors on the original credit card account will remain responsible for paying the debt from the original account in accordance with the terms and conditions of the original credit card account until the balance is paid in full.

(d) Proof that the nonresponsible party notified the issuer of the credit card in compliance with this section shall be an affirmative defense to any action to recover card debt resulting from any charge on the account after the date of processing of the notice.

**History.** Acts 2003, No. 1477, § 1.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 9-12-301 through 9-12-

322 may not apply to this section, which was enacted subsequently.

#### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Credit Card Debt, 26 U. Ark. Little Rock Legislation, 2003 Arkansas General Assembly, Family Law, Protection from L. Rev. 418.

#### 9-12-324. Decree dissolving a covenant marriage.

In all divorce decrees that dissolve a covenant marriage created under the Covenant Marriage Act of 2001, § 9-11-801 et seq., the court shall enter a finding that the marriage being dissolved is a covenant marriage.

**History.** Acts 2005, No. 1890, § 2.

effective date of this act.”

**A.C.R.C. Notes.** Acts 2005, No. 1890, § 3, provided: “This act shall apply to all petitions for divorce filed on or after the

Acts 2005, No. 1890 became effective August 12, 2005.

#### 9-12-325. Condonation abolished.

(a) The defense of condonation to any action for absolute divorce or divorce from bed and board is abolished.

(b) The abolition of the defense of condonation under this section shall not affect the application of § 9-12-308.

**History.** Acts 2005, No. 182, § 1.

consent, or equal guilt of parties, § 9-12-308.

**Cross References.** Effect of collusion,

## CHAPTER 13

### CHILD CUSTODY AND VISITATION

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. UNIFORM CHILD CUSTODY JURISDICTION ACT. [REPEALED.]
3. PERSONAL RECORDS OF CHILD.
4. INTERNATIONAL CHILD ABDUCTION PREVENTION ACT.

**Publisher's Notes.** As to jurisdiction of circuit court over certain proceedings, see § 9-27-306.

#### RESEARCH REFERENCES

**A.L.R.** Social worker's expert testimony on custody issue. 1 A.L.R.4th 837.

Parent's physical disability or handicap as factor in custody award or proceedings. 3 A.L.R.4th 1044.

Initial award or denial of child custody to homosexual or lesbian parent. 6 A.L.R.4th 1297.

Natural parent and stepparent: custody award. 10 A.L.R.4th 767.

Race as factor in custody proceedings. 10 A.L.R.4th 796.

Desire of child as to geographical location as factor in awarding custody or terminating parental rights. 10 A.L.R.4th 827.

Retention of custody by mother incarcerated in penal institution. 14 A.L.R.4th 748.

Necessity of requiring presence in court of both parties in proceedings relating to custody or visitation of children. 15 A.L.R.4th 864.

Joint custody. 17 A.L.R.4th 1013.

Propriety of awarding custody of child to parent residing or intending to reside in foreign country. 20 A.L.R.4th 677.

Kidnapping or related offense by taking or removing of child by or under authority of parent or one in loco parentis. 20 A.L.R.4th 823.

Religion as factor in custody. 22 A.L.R.4th 971.

Interference by custodian with noncustodial parent's visitation rights as grounds for change. 28 A.L.R.4th 9.

Court-authorized permanent or temporary removal of child by parent to foreign country. 30 A.L.R.4th 548.

Temporary conditional relinquishment of custody. 35 A.L.R.4th 61.

Homosexual or lesbian parent: visitation rights of. 36 A.L.R.4th 997.

Statute allowing endangered child to be temporarily removed from parental custody. 38 A.L.R.4th 756.

Provision of custody or visitation order designed to insulate child from parent's extramarital sexual relationships. 40 A.L.R.4th 812.

Visitation of adult child against his or her wishes, parent's or relative's rights. 40 A.L.R.4th 846.

Primary caretaker role of respective parents as factor in awarding custody of child. 41 A.L.R.4th 1129.

Liability of legal or natural parent, or one who aids and abets, for damages resulting from abduction of own child. 49 A.L.R.4th 7.

Right to attorney's fees in proceeding for modification of child custody or support order after absolute divorce. 57 A.L.R.4th 710.

Transsexuality of parent as factor in award of custody of children. 59 A.L.R.4th 1170.

Employment of mother as factor in awarding custody. 62 A.L.R.4th 259.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Separating children by custody awards to different parents-post-1975 cases. 67 A.L.R.4th 354.

Validity and construction of surrogate parenting agreement. 77 A.L.R.4th 70.

Rights and obligations resulting from

human artificial insemination. 83 A.L.R.4th 295.

Child custody and visitation rights of persons infected with AIDS. 86 A.L.R.4th 211.

Authority of court, upon entering default judgement, to make orders for child custody or support which were not specifically requested in pleadings of prevailing party. 5 A.L.R.5th 863.

Continuity of residence as factor in contest between parent and nonparent for custody of child who has been residing with nonparent-modern status. 15 A.L.R.5th 692.

Parents use of drugs as a factor in award of custody of children, visitation rights or termination of parental rights. 20 A.L.R.5th 534.

Age of parent as factor in awarding custody. 35 A.L.R.5th 57.

Smoking as a factor in child custody and visitation cases. 36 A.L.R.5th 377.

Full faith and credit "last-in-time" rule as applicable to sister state divorce or custody judgement which is inconsistent with the forum state's earlier judgement. 36 A.L.R.5th 527.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 73.

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children. 51 A.L.R.5th 241.

Mental health of contesting parent as factor in award of child custody. 53 A.L.R.5th 375.

Initial award or denial of child custody to homosexual or lesbian parent. 62 A.L.R.5th 591.

Custodial parent's homosexual or lesbian relationship with third person as justifying modification of child custody order. 65 A.L.R.5th 591.

Custodial parent's relocation as grounds for change of custody. 70 A.L.R.5th 377.

**Am. Jur.** 24A Am. Jur. 2d, Divorce & S., § 944 et seq.

47 Am. Jur. 2d Juvenile Courts, § 1 et seq.

59 Am. Jur. 2d, Parent & C., § 23 et seq.

**Ark. L. Notes.** Flaccus, Children and Divorce: A Bad Combination and How to Make it Better, 2003 Arkansas L. Notes 13.

**Ark. L. Rev.** Note, How a State's Interests in a Child's Welfare Are Frustrated by Indiscriminate Application of the Final Judgment Rule: Arkansas Department of Human Services v. Lopez, 44 Ark. L. Rev. 895.

**C.J.S.** 2 C.J.S., Adoption, §§ 65, 139.

27C C.J.S., Divorce, § 611 et seq.

38 C.J.S., Gaming, § 109.

43 C.J.S., Infants, §§ 11 et seq., 24, 27.

51 C.J.S., Kidnap., § 4.

67A C.J.S., Parent & C., §§ 9, 10 et seq., 19, 41, 42-46, 52.

**U. Ark. Little Rock L.J.** Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

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9-13-102. Visitation rights of brothers and sisters.

9-13-103. Visitation rights of grandparents when the child is in the custody of a parent.

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9-13-106. Attorney ad litem programs.

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not have custody of the child.

9-13-108. Visitation — Preference of child.

9-13-109. Drug testing — Proceedings concerning child custody, visitation, or the welfare of a child.

9-13-110. Parents who are members of the armed forces.



**Preambles.** Acts 2007, No. 301 contained a preamble which read:

"WHEREAS, members of the armed forces of the United States play a vital role in our national security and in the security and safety of the State of Arkansas; and

"WHEREAS, it is vital to the short-term and long-term interests of the armed forces of the United States, and therefore the nation and this state, to attract and retain qualified, competent people; a substantial number of Arkansas adults have children from relationships that have terminated through divorce or otherwise; and it is contrary to public policy to discourage these adults from service in the armed forces; and

"WHEREAS, recent national emergencies have demonstrated that noncustodial parents will sometimes attempt to use a custodial parent's military mobilization, in and of itself, as a 'material change in circumstances' to attempt to justify a change in custody; and

"WHEREAS, recent national emergencies have demonstrated that parents with physical custody of a child or children will sometimes use the fact of the noncustodial parent's military mobilization as an excuse to deny or curtail the visitation of the noncustodial parent; such visitation is even more critical to both parent and child during military mobilization and deployment than it would be under normal circumstances; and

"WHEREAS, periods of military mobilization and deployment are stressful enough for a service member and his or her children without facing the added stress of court proceedings and of potentially losing custody rights or visitation rights; and

"WHEREAS, children of members of the armed forces of the United States should not view service to their country as a negative experience to be avoided,

"NOW THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:"

**Effective Dates.** Acts 1979, No. 278, § 3: Mar 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is exceedingly difficult for divorced fathers to obtain custody of their children, notwithstanding that they are more qualified in many instances than

the divorced mothers, and that this results in an environment detrimental to the welfare of the children. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force from the date of its passage and approval."

Acts 1981, No. 920, § 3: Mar. 30, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that in some cases where parents, having custody over a child, deny that child the privilege of seeing or visiting the child's brother(s) and/or sister(s) regardless of the degree of blood relationship; that it is in the best interests of the citizens of this State that provisions be made whereby the chancery courts may, upon petition of any brother or sister regardless of the degree of blood relationship, or parent, guardian or next friend of such party, grant such brother or sister regardless of the degree of blood relationship reasonable rights of visitation with any brother(s) and/or sister(s) regardless of the degree of blood relationship whose parents have denied such access; that this Act is designed to specifically authorize the chancery courts to grant such visitation rights and to issue orders necessary to enforce such visitation rights and should be given immediate effect."

Acts 1987, No. 17, § 3: Feb. 9, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 403 of 1985 was intended to apply only when the marital relationship between the parents of a child has been severed by death, divorce or legal separation; that Act 403 contains language which may result in confusion regarding its applicability; that this Act eliminates that confusing language; and that this Act should be given immediate effect in order to prevent a misinterpretation of the law to the detriment of children. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 708, § 7: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the effectiveness of this act on July 1, 1999 is essential

to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2003, No. 652, § 3: Mar. 25, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that our grandparents visitation law has been declared substantially unconstitutional by the Arkansas Supreme Court; that the Arkansas Supreme Court has asked the legislature to rewrite the law; that over fifty-five thousand (55,000) grandparents are raising their grandchildren in this state and they have no right to continue their relationship with their grandchildren if the parent limits or denies contact; that under current law, children are being denied visitation with grandparents with whom they have significant and viable relationships; that it is the public policy of this state to protect the best interest of the child; and that this act is immediately necessary to protect the best interest of children in this state because the denial of visitation with grandparents with whom the children have significant and viable relationships is harming children. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 301, § 2: Mar. 16, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that members of the armed forces are spending inordinate time and energy dealing with issues of child custody and visitation as a sole consequence of being mobilized in support of national emergencies; that such issues detract and degrade from morale, training, military readiness, and mission accomplishment and, therefore, have a direct adverse impact on the security of the United States and this state; that recent national military mobilizations of Arkansas members of the armed forces have magnified these problems; that adding the stress of potential permanent changes in custody or visitation during a time when a parent is mobilized to military service is generally not in the best interest of the child, and that this act is immediately necessary to protect the security of the United States and the State of Arkansas and to protect the best interests of children. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Family Law, 27 U. Ark. Little Rock L. Rev. 731.

### 9-13-101. Award of custody.

(a)(1)(A)(i) In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but



solely in accordance with the welfare and best interest of the child.

(ii) In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and capacity to reason, regardless of chronological age.

(B) When a court order holds that it is in the best interest of a child to award custody to a grandparent, the award of custody shall be made without regard to the sex of the grandparent.

(2)(A) Upon petition by a grandparent who meets the requirements of subsection (b) of this section and subdivision (a)(1) of this section, a circuit court shall grant the grandparent a right to intervene pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure.

(B)(i) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or younger when:

(a) A grandchild resides with this grandparent for at least six (6) continuous months prior to the grandchild's first birthday;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(ii) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or older when:

(a) A grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(iii) Notice to a grandparent shall be given by the moving party.

(3) For purposes of this section, "grandparent" does not mean a parent of a putative father of a child.

(4)(A) The party that initiates a child custody proceeding shall notify the circuit court of the name and address of any grandparent who is entitled to notice under the provisions of subdivision (a)(1) of this section.

(B) The notice shall be in accordance with § 16-55-114.

(b)(1)(A)(i) When in the best interests of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents.

(ii) To this effect, the circuit court may consider awarding joint custody of a child to the parents in making an order for custody.

(B) If a grandparent meets the requirements of subdivisions (a)(1) and (a)(2)(B) of this section and is a party to the proceedings, the circuit court may consider the continuing contact between the child



and a grandparent who is a party, and the circuit court may consider orders to assure the continuing contact between the grandparent and the child.

(2) To this effect, in making an order for custody, the court may consider, among other facts, which party is more likely to allow the child or children frequent and continuing contact with the noncustodial parent and the noncustodial grandparent who meets the requirements of subdivisions (a)(1) and (a)(2)(B) of this section.

(c)(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

(d)(1) If a party to an action concerning custody of or a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.

(e)(1) The Director of the Administrative Office of the Courts is authorized to establish an attorney ad litem program to represent children in circuit court cases in which custody is an issue.

(2) When a circuit judge determines that the appointment of an attorney ad litem would facilitate a case in which custody is an issue and further protect the rights of the child, the circuit judge may appoint a private attorney to represent the child.

(3)(A) The Supreme Court, with the advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in custody cases.

(B)(i) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(ii) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(4) When attorneys are appointed pursuant to subdivision (e)(2) of this section, the fees for services and reimbursable expenses shall be

paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(5)(A) When a circuit judge orders the payment of funds for the fees and expenses authorized by this section, the circuit judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(B) The circuit court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

(7) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the Arkansas Judicial Council and the Subcommittee on Administrative Rules and Regulations of the Legislative Council.

(8)(A) The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(B) Statistics shall include the ages of children served, whether the custody issue arises at a divorce or post-divorce stage, whether psychological services were ordered, and any other relevant information.

**History.** Acts 1979, No. 278, § 1; A.S.A. 1947, § 34-2726; Acts 1997, No. 905, § 1; 1997, No. 1328 § 1; 1999, No. 708, § 2; 2001, No. 1235, § 1; 2001, No. 1497, § 1; 2003, No. 92, § 1; 2005, No. 80, § 1; 2007, No. 56, § 1.

**Amendments.** The 2007 amendment substituted "If" for "Where" at the beginning of (c)(1); substituted "is" for "shall be" in (c)(2); inserted present (d) and redesignated former (d) as (e); and substituted "(e)(2)" for "(d)(2)" in (e)(4).

## RESEARCH REFERENCES

**A.L.R.** Religion as factor in visitation cases. 95 A.L.R.5th 533.

Restrictions on parent's child visitation rights based on parent's sexual conduct. 99 A.L.R.5th 475.

Religion as factor in child custody cases. 124 A.L.R.5th 203.

**U. Ark. Little Rock L.J.** Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Survey of Arkansas Law: Family Law, 6 U. Ark. Little Rock L.J. 159.

Arkansas Law Survey, Morgan, Family Law, 8 U. Ark. Little Rock L.J. 169.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Joint Custody, 26 U. Ark. Little Rock L. Rev. 407.

Note, Family Law — Relocation Disputes — From Paycheck to Paycheck: The Demotion of the Noncustodial Parent with the Creation of the Custodial Parent's Presumptive Right to Relocate. *Hollandsworth v. Knyzewski*, 353 Ark 470, 109 S.W.3d 653 (2003), 26 U. Ark. Little Rock L. Rev. 615.

Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 921.

Annuary Survey of Caselaw: Family Law, 27 U. Ark. Little Rock L. Rev. 731.

Survey of Legislation, 2005 Arkansas General Assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.



## CASE NOTES

## ANALYSIS

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**In General.**

There is, in effect, no "final order" in a custody case, until the children have reached their majority; in essence, all orders of custody are "temporary" by their very nature. *Purtle v. Committee on Professional Conduct*, 317 Ark. 278, 878 S.W.2d 714 (1994).

Joint custody or equally divided custody of minor children is disfavored in Arkansas; however, subdivision (b)(1)(A)(ii) of this section specifically permits a court to consider such an award. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

Under Ark. R. App. P. Civ. 3(e), the appellate court did not have jurisdiction to entertain the father's argument pertaining to custody as he made no mention in notice of appeal of divorce decree, in which the trial court granted custody of the child to the mother; the mother could relocate to Australia with the child, and a standard visitation schedule with the child by the father was not feasible given the circumstances of the case. *Rawe v. Rawe*, 100 Ark. App. 90, 264 S.W.3d 549 (2007).

**Purpose.**

The clear language of the section indicates that the legislature fully intended to abolish any legal preference given a par-

ent when that preference is based on gender. *Drewry v. Drewry*, 3 Ark. App. 97, 622 S.W.2d 206 (1981); *Riddle v. Riddle*, 28 Ark. App. 344, 775 S.W.2d 513 (1989).

**Basis of Award.****—In General.**

Children of tender years need a mother's care and the custody of the children should not be divided. *Disheroon v. Disheroon*, 211 Ark. 519, 201 S.W.2d 17 (1947).

While it is unusual to award custody of young children to any one other than their mother, it is not unheard of and where estimable evidence existed in support of the chancellor's award of custody of children to the father, the decision would not be reversed. *Stephenson v. Stephenson*, 237 Ark. 724, 375 S.W.2d 659 (1964).

Denial of a petition to take custody of a father's children was not against clear preponderance of evidence. *Mabry v. Mabry*, 243 Ark. 543, 420 S.W.2d 856 (1967).

Evidence sufficient to sustain court finding that husband was entitled to legal custody of children. *Miller v. Johnson*, 252 Ark. 697, 480 S.W.2d 574 (1972).

While it is permissible for the chancellor to make an award of custody or visitation after hearing the opinions of experts, he cannot delegate this judicial function to someone outside the court, especially to an expert employed by one of the parties. *Jones v. Jones*, 326 Ark. 481, 931 S.W.2d 767 (1996).

Where a person stands in loco parentis to a child, rather than a person or persons who simply have a relationship with the child, the finding of an in loco parentis relationship is different from the grandparent relationships found in prior Arkansas precedent because it concerns a person who in all practical respects is a parent; further, the status of in loco parentis permits, where circumstances warrant, that a stepparent be granted visitation with a stepchild after a divorce. *Robinson v. Ford-Robinson*, 88 Ark. App. 151, 196 S.W.3d 503 (2004).

**—Drug Use.**

Chancellor did not abuse his discretion in considering prescription drug use of parent seeking custody as a factor in determining what was in child's best inter-



est, where he found parent was taking some of the drugs for mood swings and child needed stability. *Rector v. Rector*, 58 Ark. App. 132, 947 S.W.2d 389 (1997).

Chancellor could consider that parent seeking custody had gone to the trouble and expense of having tests for illegal drug use performed, because it went to the credibility of his testimony that he had stopped using illegal drugs, although the results of the tests were not introduced after opposing counsel objected to their admission. *Rector v. Rector*, 58 Ark. App. 132, 947 S.W.2d 389 (1997).

### —Grandparents.

Paternal grandparents could not prevail against mother in action over custody of children in absence of a showing that modification of decree was to the best interest of the children, it being firmly settled that, as between a parent and a grandparent, the law awards custody to the parent unless he or she is incompetent or unfit to have the custody of the children. *Feight v. Feight*, 253 Ark. 950, 490 S.W.2d 140 (1973).

In child custody matters, the court must keep in view primarily the welfare of the minor child, and, as between parent and grandparent, the law prefers the parent unless the parent is incompetent or unfit; also custody is not awarded to comfort the emotions of either parent. *Perkins v. Perkins*, 266 Ark. 957, 589 S.W.2d 588 (Ct. App. 1979).

### Burden of Proof.

Father required to return minor child to the mother where the chancellor erred in shifting the burden of proof away from the father, as the party seeking custody modification, to require the mother, the custodial parent, to prove her ability to adequately provide a stable home environment for the child. *Jones v. Jones*, 326 Ark. 481, 931 S.W.2d 767 (1996).

### Change in Custody Not Warranted.

The fact that the female children were soon to enter puberty was not a material change in circumstances allowing a change in custody from the father to the mother. *Harrington v. Harrington*, 55 Ark. App. 22, 928 S.W.2d 806 (1996).

Trial court erred by changing custody based on a mother's motion to relocate because there was no evidence to support a finding that the mother was attempting

to move without permission of the court; moreover, the mother was not intentionally frustrating the father's visitation rights. *Durham v. Durham*, 82 Ark. App. 562, 120 S.W.3d 129 (2003).

Change of custody from mother to father was unwarranted as no material change in circumstances had occurred; a finding that the mother was in contempt was insufficient to justify such a change where the children were well-cared for, doing well in school, and the father's living conditions were less than desirable. *Bernal v. Shirley*, 96 Ark. App. 148, 239 S.W.3d 11 (2006).

Change in custody of two minor children from the mother to the father based solely on the children's preferences was improper as a determination first had to be made as to whether a material change in circumstances had occurred, and the trial court specifically found that there was no change in circumstances. *Henley v. Medlock*, 97 Ark. App. 45, 244 S.W.3d 16 (2006).

Record did not support the initial material change of circumstances finding, because the scattering of petty complaints did not amount to a failure to foster of a significant degree to support a finding of changed circumstances. *Byrd v. Vanderpool*, 104 Ark. App. 239, — S.W.3d — (2009).

Appellate court erred in overturning a trial court order denying a mother's motion for a change of custody because the mother failed to prove a material change of circumstances so as to justify a change of custody; the child continued to thrive in the father's custody and was a good student despite conflicts between the parents. *Stehle v. Zimmerebner*, 375 Ark. 446, — S.W.3d —, 2009 Ark. LEXIS 207 (Jan. 30, 2009).

### Change in Custody Warranted.

Where both father and mother had remarried, and the mother had moved the children several hundred miles from where the children's father and extended family reside, the several significant changed circumstances meant that it was in the best interest of the children to be in their father's custody. *Riley v. Riley*, 45 Ark. App. 165, 873 S.W.2d 564 (1994).

Although temporary custody had been awarded to the father, the chancellor's permanent award of custody to the

mother was upheld. *Milum v. Milum*, 49 Ark. App. 3, 894 S.W.2d 611 (1995).

Where parent to whom custody was originally awarded remarried to person convicted of misdemeanor narcotics offenses and harassment, and began to associate with others with criminal records in the presence of the child, such circumstances warranted a change in custody. *Stone v. Steed*, 54 Ark. App. 11, 923 S.W.2d 282 (1996).

Change of custody of thirteen-year-old boy from mother to father was affirmed where the chancellor made a difficult decision based on extensive and varied testimony, and was in a better position to determine the credibility of the witnesses and the best interest of the child. *Turner v. Benson*, 59 Ark. App. 108, 953 S.W.2d 596 (1997).

Where the father presented sufficient evidence that the mother exhibited hostility, a lack of cooperation, withheld visitation, exhibited immorality and promiscuity which was evident from her admission that she lived with a man to whom she was not married but who was the father of her younger child, failed to remain fully employed, and demonstrated irresponsibility by failing to maintain a stable home for the child, the trial judge should have found that the totality of the evidence constituted a material change in the circumstances sufficient enough to warrant a change in custody to the father; the fact that the father was taking business classes, had remarried, and had purchased a home since the time of the original decree, supported his cause. *Walker v. Torres*, 83 Ark. App. 135, 118 S.W.3d 148 (2003).

Trial court did not err in ordering a change of custody from the mother to the father where the trial court (1) determined that there had been a material change in circumstances, the abuse of another child in the home, (2) gave a detailed account of the events constituting such a change, and (3) found it to be in the best interest of the child to order a change of custody. *Miller v. Ark. Dep't of Human Servs.*, 86 Ark. App. 172, 167 S.W.3d 153 (2004).

Modification of a joint custody arrangement to give full custody to the father was appropriate based on the mother's behavior in the child's presence and the parties' disagreement over a custody schedule; although the trial court inappropriately in-

cluded as a factual finding that the mother, who was African American, dated only white men, no challenge to that finding was preserved for review. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Order changing custody of a child from the mother to the father was affirmed where, although trial court relied primarily on the "illicit sexual relationship" between the mother and her new husband prior to their marriage, there was other evidence of changed conditions, including the mother having six or seven different residences in the span of six years, while the father provided stability; further, while it was true that a change of circumstances of the noncustodial parent, including a claim of an improved life because of a recent marriage, was not sufficient, standing alone, to justify modifying custody, a noncustodial parent's remarriage could be considered as a factor in determining whether there had been a sufficient change in circumstances affecting the best interest of the child. *Alphin v. Alphin*, 364 Ark. 332, 219 S.W.3d 160 (2005).

Where a mother with primary physical custody of her daughter admitted to cohabiting with the opposite sex, her conduct was a sufficient change of circumstances demonstrating that a modification of child custody was in her daughter's best interest and the trial court did not err by awarding the father sole custody. *Alphin v. Alphin*, 90 Ark. App. 71, 204 S.W.3d 103 (2005).

Grant of father's petition to change custody was affirmed as evidence indicated that the mother had become increasingly unstable since the divorce, that she persistently failed to take the precaution of properly restraining the children with seatbelts in the car, and that she had amphetamines in her system when she got into a car accident. *Cozzens v. Cozzens*, 93 Ark. App. 415, 220 S.W.3d 257 (2005).

Trial court erred in finding that mother had failed to prove a material change in circumstances requiring a modification of custody; custodial father's arrests since the divorce and his demeanor at trial caused appellate court to be greatly concerned that he would, by his example, teach his son a confrontational approach to life that was certain to be self-destructive.



tive. *Inmon v. Heinley*, 94 Ark. App. 40, 224 S.W.3d 572 (2006).

Trial court should have granted father's motion to change custody of minor child with a form of autism where the evidence showed that the father made a difference in helping the child overcome the symptoms of his disorder, and the trial court's statement about discouraging custody cases resulted in reversible error. *Harris v. Grice*, 97 Ark. App. 37, 244 S.W.3d 9 (2006).

Father's petition for a custody change was granted in a case where a mother violated a court order by cohabitating with six different sexual partners and by failing to get along for the sake of the child; moreover, she lacked financial, residential, and employment stability. The change in custody was not due to the mother's sexual orientation. *Holmes v. Holmes*, 98 Ark. App. 341, 255 S.W.3d 482 (2007).

Mother's continued alienation of a father from the parties' son constituted a material change of circumstances that warranted awarding the father custody of the son and did not constitute punishment of the mother when the mother did the following: (1) refused to keep the father apprised of medical information, especially in light of the son's serious medical conditions; (2) refused to have the son ready for visitation; (3) refused the father visitation when the mother decided it was in the son's best interest to do so; and (4) refused the father the first right to babysit the son. *Sharp v. Keeler*, 99 Ark. App. 42, 256 S.W.3d 528 (2007).

Order awarding the father sole custody of the parties' three minor children was not clearly against the weight of the evidence, because there was a substantial amount of evidence that the children, who had essentially been in the sole custody of the father since the mother moved, were doing well in school, at home, and in their extracurricular activities. The children had a stable home environment as they had lived in the same home for more than five years, the children had a stable academic environment as they had all attended schools in the same school district or daycare facility, and the evidence was that they were performing well in school. *Gray v. Gray*, 101 Ark. App. 6, 269 S.W.3d 834 (2007).

Trial court did not err in finding that a change of circumstances existed and in granting a father's motion for a change of custody and relocation to Texas because the children's stepfather's conviction for child endangerment against his biological son was sufficient to support the finding that a material change of circumstances occurred to justify reevaluating the best interests of the children. *Davis v. Deric*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 363 (Apr. 29, 2009).

### **Conduct of Parent.**

Chancellor did not find that mother was an unfit mother based solely on her homosexuality; chancellor's primary focus was on mother's conduct, not merely her status or sexual preference. *Larson v. Larson*, 50 Ark. App. 158, 902 S.W.2d 254 (1995).

Evidence concerning the moral character of a parent is relevant to the best interest of the child and the issue of parental custody. *Stone v. Steed*, 54 Ark. App. 11, 923 S.W.2d 282 (1996).

Arkansas courts have never condoned a parent's promiscuous conduct or lifestyle when conducted in the presence of the child. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Award of joint custody to parties in a divorce proceeding was clearly erroneous considering the attitudes of the parties toward each other and toward their respective roles, the fact that a basis of the husband's request for joint custody was his concern that the wife might relocate if she had sole custody, and the parties' differing opinions as to disciplining the children. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

### **Evidence.**

Testimony that parent had sexually abused another child was irrelevant in custody proceeding, because neither a proper link had been made connecting the allegation to the case at hand nor had a proper investigation been made into the allegations, which were denied by the parent. *Rector v. Rector*, 58 Ark. App. 132, 947 S.W.2d 389 (1997).

Trial court did not clearly err in awarding custody to the father where it was clear that the trial court determined that the best interests and welfare of the children would be served by a wholesome environment and that such an environ-



ment would exist with the father and not the mother, who had moved the children to several different states and had several different live-in boyfriends. *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004).

Order awarding custody of an illegitimate child to the child's father was proper because although the appellate court was troubled by the fact that during the pendency of the custody dispute the father was accused of raping the mother and pled guilty to falsely imprisoning the mother, the trial court's factual findings made it clear that it found the mother to be incredible. *Harmon v. Wells*, 98 Ark. App. 355, 255 S.W.3d 501 (2007).

### **Fault.**

Fault in the divorce is not necessarily the determining factor in awarding custody since an award of custody is neither a reward nor a punishment for a parent; the children's welfare is the controlling consideration. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

### **Grandparents' Rights.**

Where the mother's parental rights were terminated, the trial court did not abuse its discretion by denying the maternal grandparents' motion to intervene in the adoption proceedings. The maternal grandparents lost any right they had to custody and visitation of the children; this section did not apply because they were no longer grandparents. *Burt v. Ark. HHS*, 99 Ark. App. 402, 261 S.W.3d 468 (2007), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 69 (Jan. 31, 2008).

### **Indian Child Welfare Act.**

Court erred in granting custody of twins to their mother's fourth cousin instead of to her third cousin, with whom the twins had been living as it failed to comply with the placement preference in the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C.S. §§ 1901-1963, and the "best interest test" was to be weighed against the standard of maintaining the integrity of the Nation, its culture, its children, and its progression through time not to become extinct. *Cutright v. State*, 97 Ark. App. 70, 244 S.W.3d 702 (2006).

### **Keeping Siblings Together.**

Although the value of keeping siblings together is a factor in determining what is

in a child's best interest, the awarding of child custody based solely on the presumption that siblings should be kept together is contrary to this section. *Atkinson v. Atkinson*, 72 Ark. App. 15, 32 S.W.3d 41 (2000).

Trial court's decision divesting custody of two children from their parents and awarding custody to their maternal grandparents was clearly erroneous as evidence that the children had sustained various injuries and illnesses while in their father's care did not support a finding that he was an unfit parent, and the children had a half-brother (the father's child with his current wife) with whom they shared a significant family relationship. *Dunham v. Doyle*, 84 Ark. App. 36, 129 S.W.3d 304 (2003).

### **Modification.**

A judicial award of custody should not be modified unless it is shown that there are changed conditions which demonstrate that a modification of the decree is in the best interest of the child, or when there is a showing of facts affecting the best interest of the child that were either not presented or were not known by the chancellor at the time the original custody order was entered. *Stamps v. Rawlins*, 297 Ark. 370, 761 S.W.2d 933 (1988).

The polestar in making a relocation determination is the best interest of the child and the trial court should take into consideration the following matters: (1) the reason for the relocation; (2) the educational, health, and leisure opportunities available in the location in which the custodial parent and children will relocate; (3) visitation and communication schedule for the noncustodial parent; (4) the effect of the move on the extended family relationships in the location in which the custodial parent and children will relocate, as well as Arkansas; and (5) preference of the child, including the age, maturity, and the reasons given by the child as to his or her preference. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Relocation alone is not a material change in circumstance, and a presumption exists in favor of relocation for custodial parents with primary custody; the noncustodial parent should have the burden to rebut the relocation presumption, and the custodial parent no longer has the

obligation to prove a real advantage to herself or himself and to the children in relocating. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Custody changed from mother to father in a modification action brought a year after the divorce where the mother's situation had radically improved, even though the father's situation had not substantially changed since the divorce. *Mason v. Mason*, 82 Ark. App. 133, 111 S.W.3d 855 (2003).

For a change of custody, the chancellor must first determine that a material change in circumstances has occurred since the last order of custody; if that threshold requirement is met, the chancellor must then determine who should have custody with the sole consideration being the best interest of the children. *Tipton v. Aaron*, 87 Ark. App. 1, 185 S.W.3d 142 (2004).

Joint custody or equally divided custody of minor children is not favored in Arkansas, and when the parties have fallen into such discord that they are unable to cooperate in sharing the physical care of the children, this constitutes a material change in circumstances affecting the children's best interest. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Where a mother made unsubstantiated sexual abuse allegations, a trial court did not err by awarding custody to a father in a family-in-need-of-services case under § 9-27-338, because it was not in the child's best interest to return to the mother where the child was doing better while not in her custody; moreover, the father did not have to show a material change in circumstances since this was not a regular custody proceeding. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007).

Even recognizing a father's bad conduct in creating trouble concerning the interrelationships among himself, the child, and the child's mother, the court could not overlook the evidence that was before the trial court and could not conclude that it rose to the level that would constitute a change of circumstances, especially in light of a doctor's testimony that a reduction in visitation would not be beneficial to the child. *Williams v. Ramsey*, 101 Ark. App. 61, 270 S.W.3d 345 (2007).

Substantial evidence supported findings that a father, in contravention of

court orders, continued to refer to his current wife as the child's "Mommy" and that he failed to give the child her medication. The evidence established that the father willfully and intentionally violated prior court orders and supported the trial court's holding him in contempt. *Williams v. Ramsey*, 101 Ark. App. 61, 270 S.W.3d 345 (2007).

### **Parental Visitation Rights.**

The party desiring to change the custody of a child whose custody has been judicially determined in a divorce decree, must show altered conditions affecting the welfare of the child or that material facts as to the situation were not made known to the court in the original proceedings. *Marr v. Marr*, 213 Ark. 117, 209 S.W.2d 456 (1948).

Conditions found to have altered the circumstances under which the original custody decree was entered to such an extent as to warrant a change of custody to benefit the children. *Powell v. Woolfolk*, 233 Ark. 893, 349 S.W.2d 657 (1961).

A judicial award of custody would not be modified unless it was shown that there were changed conditions which demonstrated that a modification of the decree was to the best interest of the children. *Feight v. Feight*, 253 Ark. 950, 490 S.W.2d 140 (1973).

In proceedings to modify order for custody of children, violation of court orders or contempt of court is a factor to be taken into consideration by the court in the exercise of its discretion to grant or deny a modification of custody orders but is not so conclusive as to require the court to act contrary to the best welfare of the child. *Johnson v. Arledge*, 258 Ark. 608, 527 S.W.2d 917 (1975).

Arkansas courts held to be without jurisdiction to adjudicate parental visitation rights under divorce decree rendered in another state. *Kline v. Kline*, 260 Ark. 550, 542 S.W.2d 499 (1976); *Scinta v. Markward*, 266 Ark. 976, 588 S.W.2d 456 (Ct. App. 1979).

Since this subchapter does not give a county chancery court jurisdiction to address the issue of visitation, collateral matters such as visitation cannot be raised as a defense. *State, Jefferson County Child Support Enforcement Unit v. Robinson*, 311 Ark. 133, 842 S.W.2d 47 (1992).



Under this subchapter, a state court could not directly determine visitation; it also could not indirectly determine visitation by making payment of child support dependent upon visitation. *State, Jefferson County Child Support Enforcement Unit v. Robinson*, 311 Ark. 133, 842 S.W.2d 47 (1992).

A chancery court has the power to use its contempt power to enforce its order awarding visitation to a stepparent in the context of a divorce decree. *Young v. Smith*, 331 Ark. 525, 964 S.W.2d 784 (1998).

The parties' past problems with visitation alone were not dispositive of the questions of the integrity of the mother's motives for seeking the move to Texas, or the likelihood of her compliance with visitation orders in the future. *Friedrich v. Bevis*, 69 Ark. App. 56, 9 S.W.3d 556 (2000).

The trial court should have applied the factors to be considered when a custodial parent seeks to move with the parties' children to a place so geographically distant as to render weekly visitation impossible and impractical, and required mother to bear one-half the transportation costs where her new job resulted in a substantial raise in pay, and her move to Texas was wholly voluntary. *Friedrich v. Bevis*, 69 Ark. App. 56, 9 S.W.3d 556 (2000).

This section does not confer jurisdiction on the trial court to terminate parental rights. The statute deals with child custody and visitation issues and does not address the termination of parental rights. *Hudson v. Kyle*, 352 Ark. 346, 101 S.W.3d 202 (2003).

Trial court did not clearly err in structuring a specific visitation schedule regarding the mother's and the father's son after it granted relocation to the mother, who moved to Virginia because her husband had obtained new employment in that state; while the visitation order provided for the son to spend virtually every holiday with the father, each spring break, and one weekend each month in which there was no holiday or other school vacation, the order also provided that the son spend all remaining time at the mother's household. *Rebsamen v. Rebsamen*, 82 Ark. App. 329, 107 S.W.3d 871 (2003).

Modification of father's visitation rights was warranted where elimination of daily

visits would lessen the need for contact between the parties; the social worker testified that the animosity between the father and mother caused the children a great deal of stress and some type of modification would be in the best interest of the children, and that it was necessary to keep the parties on neutral territory during pick up and drop off. *Meins v. Meins*, 93 Ark. App. 292, 218 S.W.3d 366 (2005).

Although a mother's continued alienation of a father from the parties' son warranted a change in custody, supervised visitation for the mother was not warranted when nothing in the psychologist's report indicated that the mother had mental-health issues that rendered her incapable of caring for the son during visitation and none of the evidence revealed that the mother had mistreated the son or neglected the son's needs during the time the son was in the mother's care. *Sharp v. Keeler*, 99 Ark. App. 42, 256 S.W.3d 528 (2007).

Marriage of the biological parents of a child, who was born while the mother was married to her ex-husband, was not a change of circumstances that warranted terminating the ex-husband's visitation rights which were granted to him in a divorce decree; moreover, it would not have been in the child's best interests to do so because the child had known the ex-husband as his father his entire life and had enjoyed visitation with him since his mother had divorced, and his older brother, whom he had known since birth and with whom he had a good relationship, lived with the ex-husband and the record indicates that the brother was not welcome in the biological parents' home and, therefore, terminating the ex-husband's visitation would also disallow the child the opportunity to maintain his relationship with his brother. *Hunter v. Haunert*, 101 Ark. App. 93, 270 S.W.3d 339 (2007).

Father's argument that a trial court erroneously refused to enforce visitation was rejected because, not only did the father fail to object to the visitation arrangement set out by the trial court, he suggested it in the first place. The father stated he did not want to force his children to enter into a relationship with him, but he also did not want them prevented from contacting him if they so desired.



Norman v. Cooper, 101 Ark. App. 446, 278 S.W.3d 569 (2008).

### **Preference.**

A court may award split or full custody of a child to a stepparent, but the preference for awarding custody to a natural parent must prevail unless it is established that the natural parent is unfit. *Stamps v. Rawlins*, 297 Ark. 370, 761 S.W.2d 933 (1988).

Trial court properly granted a father's motion to change custody on the ground that a change of circumstances had occurred because the children expressed a strong, well-reasoned preference to return to Arkansas and their father's custody; the children did not oppose a short-term move to Missouri for their stepfather's career, but did not want to move to Wisconsin indefinitely. *Myers v. McCall*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 600 (July 1, 2009).

### **Presumptions.**

Where it was clear from chancellor's remarks that his general view that young girls should be raised by their mothers was given the force of a presumption in deciding custody issue, grant of custody to mother was reversed and remanded. *Fox v. Fox*, 31 Ark. App. 122, 788 S.W.2d 743 (1990).

Fact that the father had remarried and had a new child did not equate to a change of circumstances, especially where the half-siblings never lived together, and even though the mother's request to relocate to a neighboring state was primarily for personal reasons, the trial court improperly failed to apply the presumption in favor of a custodial parent's relocation in granting father's petition for a change of custody. *Middleton v. Middleton*, 83 Ark. App. 7, 113 S.W.3d 625 (2003).

In a custody modification case, the court erred by applying the wrong standard where it believed that the natural-parent preference was binding and that it could not deviate from it because determining whether the child was to be better off with one party versus another was precisely what the trial court should have decided; the natural-parent preference and the fitness of that parent were not the absolute determinants in custody-modification matters. *Crosser v. Henson*, 357 Ark. 635, 187 S.W.3d 848 (2004).

In light of the presumption in favor of relocation and the fact that relocation alone was not a material change in circumstances, the trial court erred in determining the custody issue between the father and mother without addressing the relocation factors; thus, the matter was remanded for the trial court to decide the custody issue in conjunction with those factors. *Jowers v. Jowers*, 92 Ark. App. 374, 214 S.W.3d 294 (2005).

### **Racial Bias.**

In a child custody case, where the mother lived in an interracial household, the trial court used private racial biases as an impermissible basis for awarding child custody to the father; private racial biases and the possible injury that they might inflict are not permissible considerations for the removal of a child from the custody of its natural mother. *Tipton v. Aaron*, 87 Ark. App. 1, 185 S.W.3d 142 (2004).

### **Remarriage.**

Where, at the time of the original divorce decree, the father knew he was likely to remarry, and voluntarily entered into the agreement to award custody of the child to the mother, the father's remarriage did not constitute a material change in circumstances; the father cannot use the circumstances he created as grounds to modify custody. *Jones v. Jones*, 326 Ark. 481, 931 S.W.2d 767 (1996).

### **Standard of Review.**

Appellate court reviews child custody modification cases de novo and reverses only when the trial court's findings are clearly erroneous. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Because the trial court erred in labeling a change of custody in favor of the father temporary in nature, a subsequent change of custody decision for the mother was reversed and remanded because the material change in circumstances standard should have been used; this applied to every custody determination after an initial award in favor of the mother. *Hodge v. Hodge*, 97 Ark. App. 217, 245 S.W.3d 695 (2006).

**Cited:** *Kimmons v. Kimmons*, 1 Ark. App. 63, 613 S.W.2d 110 (1981); *Wing v. Wing*, 12 Ark. App. 84, 671 S.W.2d 204 (1984); *Golden v. Golden*, 57 Ark. App. 143, 942 S.W.2d 282 (1997); *Office of Child*

Support Enforcement v. Lawrence, 57 Ark. App. 300, 944 S.W.2d 566 (1997).

### **9-13-102. Visitation rights of brothers and sisters.**

The circuit courts of this state, upon petition from any person who is a brother or sister, regardless of the degree of blood relationship or, if the person is a minor, upon petition by a parent, guardian, or next friend in behalf of the minor, may grant reasonable visitation rights to the petitioner so as to allow the petitioner the right to visit any brother or sister, regardless of the degree of blood relationship, whose parents have denied such access. The circuit courts may issue any further order that may be necessary to enforce the visitation rights.

**History.** Acts 1981, No. 920, § 1; A.S.A. 1947, § 57-137.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

### **CASE NOTES**

#### **In General.**

Father, during visitation periods with his daughter, had the right to decide what was in her best interest, including visitation between and among his daughters, in his own home, without being physically present; however, the trial court clouded

the issue of parental visitation rights by ordering concurrent sibling visitation rights under this section, and that part of the order was reversed. *Medlin v. Weiss*, 356 Ark. 588, 158 S.W.3d 140 (2004).

**Cited:** *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

### **9-13-103. Visitation rights of grandparents when the child is in the custody of a parent.**

(a) For purposes of this section:

(1) "Child" means a minor under eighteen (18) years of age of whom the custodian has control and who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner;

(2) "Counseling" means individual counseling, group counseling, or other intervention method;

(3) "Custodian" means the custodial parent of the child with the authority to grant or deny grandparental visitation;

(4) "Mediation service" means any formal or informal mediation; and

(5) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition a circuit court of this state for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if:

(1) The marital relationship between the parents of the child has been severed by death, divorce, or legal separation;

(2) The child is illegitimate and the petitioner is a maternal grandparent of the illegitimate child; or

(3) The child is illegitimate, the petitioner is a paternal grandparent of the illegitimate child, and paternity has been established by a court of competent jurisdiction.

(c)(1) There is a rebuttable presumption that a custodian's decision denying or limiting visitation to the petitioner is in the best interest of the child.

(2) To rebut the presumption, the petitioner must prove by a preponderance of the evidence the following:

(A) The petitioner has established a significant and viable relationship with the child for whom he or she is requesting visitation; and

(B) Visitation with the petitioner is in the best interest of the child.

(d) To establish a significant and viable relationship with the child, the petitioner must prove by a preponderance of the evidence the following:

(1)(A) The child resided with the petitioner for at least six (6) consecutive months with or without the current custodian present;

(B) The petitioner was the caregiver to the child on a regular basis for at least six (6) consecutive months; or

(C) The petitioner had frequent or regular contact with the child for at least twelve (12) consecutive months; or

(2) Any other facts that establish that the loss of the relationship between the petitioner and the child is likely to harm the child.

(e) To establish that visitation with the petitioner is in the best interest of the child, the petitioner must prove by a preponderance of the evidence the following:

(1) The petitioner has the capacity to give the child love, affection, and guidance;

(2) The loss of the relationship between the petitioner and the child is likely to harm the child; and

(3) The petitioner is willing to cooperate with the custodian if visitation with the child is allowed.

(f)(1) An order granting or denying visitation rights to grandparents and great-grandparents shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation under this section.

(2)(A) If the court grants visitation to the petitioner or petitioners, the visits may occur without regard to which parent has physical custody of the child.

(B) Visits with a paternal grandparent or great-grandparent may occur even when the child is in the custody of the mother, and visits with a maternal grandparent or great-grandparent may occur even when the child is in the custody of the father.

(3)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent



with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.

(4) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(5) After an order granting or denying visitation has been entered under this section, the custodian or petitioner may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

(g)(1) A court may order mediation services to resolve a visitation issue under this section if:

(A) Mediation services are available;

(B) Both parties agree to participate in mediation services; and

(C) One (1) or both of the parties agree to pay for mediation services.

(2) Records, notes, reports, or discussions related to the mediation service shall not be used by the court to determine visitation under this section.

(h)(1) A court may order counseling to address underlying matters surrounding the visitation issue under this section if:

(A) Counseling is available;

(B) Both parties agree to participate in counseling; and

(C) One (1) or both of the parties agree to pay for counseling.

(2) Records, notes, reports, or discussions related to the counseling shall not be used by the court to determine visitation under this section.

**History.** Acts 1985, No. 403, §§ 1, 3; A.S.A. 1947, §§ 34-1211.2, 34-1211.3; Acts 1987, No. 17, § 1; 1993, No. 1231, § 1; 1995, No. 1200, § 1; 2003, No. 652, § 1; 2009, No. 271, § 1.

**Amendments.** The 2009 amendment inserted (f)(2) and redesignated the subsequent subdivisions accordingly.

## RESEARCH REFERENCES

**Ark. L. Rev.** Brummer and Looney, Grandparent Rights in Custody, Adoption, and Visitation Cases, 39 Ark. L. Rev. 259.

Note, Is Arkansas's Grandparent Visitation Statute Constitutional Under the Standards Articulated By the Arkansas Supreme Court in *Linder v. Linder*?, 58 Ark. L. Rev. 197.

**U. Ark. Little Rock L.J.** Legislative

Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

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Survey of Caselaw, Family Law, 25 U. Ark. Little Rock L. Rev. 988, 992.

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parents' Visitation Rights, 26 U. Ark. Little Rock L. Rev. 411.

## CASE NOTES

### ANALYSIS

Constitutionality.

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### Constitutionality.

Failure to allow grandparents who had visitation rights to intervene in adoption proceedings was inconsistent with their due process right to be heard, since the adoption court could extinguish the visitation rights given by the chancery court. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981) (decision under prior law).

Adoption statutes did not deprive grandparents of rights to grandchildren without showing a compelling state interest, or deprive them of due process, since they did not demonstrate any constitutionally protected right or interest. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981) (decision under prior law).

This section held constitutional. *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

This section was unconstitutional as applied, and violated the mother's fundamental liberty interest under the due process clause of the U.S. Const., Amend. 14 § 1; so long as the mother was fit to care for the child, the Fourteenth Amendment right attached, and the state could not interfere without a compelling interest to do so. *Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002).

This section does not unconstitutionally discriminate between married and divorced parents. *Seagrave v. Price*, 349 Ark. 433, 79 S.W.3d 339 (2002).

Grandparent visitation statute was unconstitutionally applied in a case where the trial court made no reference in its findings as to the mother's fitness as custodial parent, and failed to give her the

presumption to which she was entitled regarding her opinions with respect to rearing her child. *Seagrave v. Price*, 349 Ark. 433, 79 S.W.3d 339 (2002).

In a father's action to terminate the maternal grandmother's visitation with his children, where he had failed to appeal a prior ruling that the Arkansas Grandparent Visitation Act was constitutional, *res judicata* precluded him from relitigating this issue because the same parties and issue had been involved in the prior action. *Hunt v. Perry*, 355 Ark. 303, 138 S.W.3d 656 (2003), cert. denied, 541 U.S. 1074, 124 S. Ct. 2428, 158 L. Ed. 2d 984 (2004).

Where the mother neither presented the trial court with the issue of the constitutionality of the Arkansas Great-Grandparents Visitation Act, Acts 2003, No. 652, nor did she obtain a ruling on the issue, the Arkansas Supreme Court declined to review the constitutionality of the grandparents visitation law. *Gwin v. Daniels*, 357 Ark. 623, 184 S.W.3d 28 (2004).

### In General.

Under the language of subsections (a) and (c) of this section, grandparents are afforded the separate right to file for visitation rights with their grandchildren in situations where the child's parents are divorced, legally separated, or when a parent has died. This section contains no restrictive language that would require grandparents to file their visitation action in a divorce action filed previously by the child's parents. In fact, § 9-12-320, the venue statute concerning subsequent proceedings in divorce actions, would be wholly inapplicable where the grandparents' action is precipitated because their son or daughter died and the surviving, but not divorced, parent denied them access to their grandchild. *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

A grandparent has standing to seek visitation where the marital relationship of the parents of the child has been severed without regard to which parent has custody of the child; the statute does not



exclude the parents of the parent with custody from standing to seek visitation. *Boothe v. Boothe*, 341 Ark. 381, 17 S.W.3d 464 (2000).

In a father's action to terminate the maternal grandmother's visitation with his children, where the trial court ruled that it was not possible to determine whether the children's behavioral problems stemmed from their visitation with the grandmother or the blending of the families of the father and his current wife, and this finding was supported by the evidence, it was not disturbed on appeal. *Hunt v. Perry*, 355 Ark. 303, 138 S.W.3d 656 (2003), cert. denied, 541 U.S. 1074, 124 S. Ct. 2428, 158 L. Ed. 2d 984 (2004).

Where a person stands in loco parentis to a child, rather than a person or persons who simply have a relationship with the child, the finding of an in loco parentis relationship is different from the grandparent relationships found in prior Arkansas precedent because it concerns a person who in all practical respects is a parent; further, the status of in loco parentis permits, where circumstances warrant, that a stepparent be granted visitation with a stepchild after a divorce. *Robinson v. Ford-Robinson*, 88 Ark. App. 151, 196 S.W.3d 503 (2004).

Order granting grandparents visitation with their grandchild was upheld where the trial court's findings made pursuant to subdivision (b)(1) of this section were supported by the evidence; the trial court accepted the grandparents at their word when they testified that they would cooperate with the mother if visitation was allowed. The grandparents shared a close and bonded relationship with the grandchild. *Peterson v. Dean*, 102 Ark. App. 215, 283 S.W.3d 610 (2008).

### **Applicability.**

This section does not vest grandparents with an absolute right to visitation or intervention, but merely a means of petitioning for visitation. *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

This section did not enable a grandparent to maintain an action for visitation rights to a grandchild when the unwed custodial parent was the grandparent's child. *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

The plain language of this section limits its operation to cases in which a marital

relationship between the parents of the child has been severed or if the child is in the custody or under the guardianship of a person other than one or both of his natural or adoptive parents. *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

A child was legitimated for purposes of the statute when his parents married after his birth and his father executed an acknowledgment of paternity and, therefore, the child's grandparents were not eligible to petition for visitation. *Ellis v. Bennett*, 69 Ark. App. 227, 10 S.W.3d 922 (2000).

Father alleged that he refused to comply with the trial court's visitation order because his son was being sexually abused by the grandmother, but the trial court found that the allegations of sexual abuse were unsubstantiated; thus, the trial court did not err in denying the father's petition to terminate the grandmother's visitation with the grandchildren pursuant to the Arkansas Grandparent Visitation Act and in finding him in contempt of the visitation order for refusing to allow the grandmother her court ordered visitation. *Hunt v. Perry*, 357 Ark. 224, 162 S.W.3d 891 (2004).

Modification of custody order was reversed because the trial court erred in finding that a mother-in-law had a third-party interest in the divorce decree; the grandmother had no visitation rights unless they were allowed under this section. *Hurt v. Hurt*, 93 Ark. App. 37, 216 S.W.3d 604 (2005).

### **Adoption.**

This section addresses itself to courts having jurisdiction in custody proceedings and is clearly inapplicable by its own terms to adoption proceedings. *Poe v. Case*, 263 Ark. 488, 565 S.W.2d 612 (1978) (decision under prior law).

Grandparents who have been granted visitation have a sufficient interest in adoption proceedings to entitle them to intervene for the limited purpose of offering such evidence as may be relevant to the focal issue such as whether the proposed adoption is in the best interest of the children. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981) (decision under prior law).

Grandparents who have court ordered visitation rights are constitutionally entitled to receive notice of an adoption



proceeding. Otherwise, their right to intervene in the adoption action is meaningless. *Brown v. Meekins*, 278 Ark. 67, 643 S.W.2d 553 (1982) (decision under prior law).

A grandmother's visitation and custody rights were derivative of her daughter's parental rights, and, as a result, were terminated when her daughter's parental rights were terminated. *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

#### **Great-Aunts.**

There is no common law right to grandparent visitation, and it must logically follow that a great-aunt has no such right. *Hendershot v. Hendershot*, 30 Ark. App. 184, 785 S.W.2d 34 (1990).

A great-aunt seeking court-ordered visitation with her grand-nephew and who had helped raise the father of her grand-nephew did not qualify as a grandparent under the provisions of this section. *Hendershot v. Hendershot*, 30 Ark. App. 184, 785 S.W.2d 34 (1990).

#### **Illustrative Cases.**

Where the testimony of two of the children's teachers, two neighbors, and other witnesses clearly demonstrated the grandmother's ability to provide love, affection, and guidance to the children, the grandmother was entitled to visitation pursuant to this section. *Grant v. Richardson*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 219 (Mar. 18, 2009).

#### **Jurisdiction.**

Subdivision (a)(1) of this section does not purport to exclude grandparent visitation after a paternity finding, and § 9-10-109(a) specifically provides for visitation grants after paternity is found; consequently, where a petition was filed by the grandfather requesting visitation, the chancery court operated well within its

authority in granting visitation rights to the grandfather as well as the father. *Rudolph v. Floyd*, 309 Ark. 514, 832 S.W.2d 219 (1992).

#### **Presumption Not Rebutted.**

Visitation with a maternal grandmother was improperly awarded because she failed to rebut the presumption under subsections (c)-(e) of this section; although she had a significant and viable relationship with a child for 12 consecutive months when he was under four years old, visitation was not in the child's best interest where there was no contact for many years, and the child did not wish to see the grandmother. The evidence did not show that the child would have been harmed by the father's decision to allow periodic contact at his discretion. *Brandt v. Willhite*, 98 Ark. App. 350, 255 S.W.3d 491 (2007).

Circuit court abused its discretion by granting the grandparents visitation with their granddaughter because the grandparents failed to establish that court-ordered visitation was in the granddaughter's best interest and failed to rebut the statutory presumption of this section that the father's decision was in the granddaughter's best interest, as they did not prove that a loss of the relationship between them and the granddaughter would likely harm her. There was no evidence presented at trial that the relationship between the grandparents and their granddaughter had been lost or would be lost, as the grandmother testified that she had seen her granddaughter seven times from November 17, 2006 and January 29, 2007 and that the father was very willing to work with the grandparents and let them see their granddaughter as much as they wanted. *Oldham v. Morgan*, 372 Ark. 159, 271 S.W.3d 507 (2008).

**Cited:** *Vice v. Andrews*, 328 Ark. 573, 945 S.W.2d 914 (1997).

### **9-13-104. Transfer of custody on school property.**

(a) In order to avoid continuing child custody controversies from involving public school personnel and to avoid disruptions to the educational atmosphere in our public schools, the transfer of a child between the child's custodial parent and noncustodial parent, when both parents are present, is prohibited from taking place on the real property of a public elementary or secondary school on normal school days during normal hours of school operations.

(b) The provisions of this section shall not prohibit one (1) parent, custodial or noncustodial, from transporting the child to school and the other parent, custodial or noncustodial, from picking up the child from school at prearranged times on prearranged days if prior approval has been made with the school's principal.

**History.** Acts 1993, No. 660, § 1.

### **9-13-105. Criminal records check.**

Any parent of a minor child in a circuit court case may petition the court to order a criminal records check of the other parent of a minor child. If the court determines there is reasonable cause to suspect that the other parent may have engaged in criminal conduct that would be relevant to the issue of custody of the minor child or visitation privileges, the court may order the sheriff of the county in which the petition was filed to conduct a criminal records check through the Arkansas Crime Information Center. The court shall review the results of the criminal records check, and if it deems appropriate, provide the results to the petitioning parent. Any costs associated with conducting a criminal records check shall be borne by the petitioning party.

**History.** Acts 1997, No. 730, § 1.

### **9-13-106. Attorney ad litem programs.**

(a) The Director of the Administrative Office of the Courts is authorized to establish attorney ad litem programs to represent children in guardianship cases in circuit court when custody is an issue.

(b) When a circuit judge determines that the appointment of an attorney ad litem would facilitate a case in which custody is an issue and further protect the rights of the child, the circuit judge may appoint a private attorney to represent the child.

(c)(1) The Supreme Court, with advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in guardianship cases.

(2)(A) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(B) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(d) When attorneys are appointed pursuant to subsection (b) of this section, the fees for services and reimburseable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(e)(1) When a judge orders the payment of funds for the fees and expenses authorized by this section, the judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(2) The court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(f) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

(g) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the Arkansas Judicial Council and the Administrative Rules and Regulations Committee of the Arkansas Legislative Council.

(h)(1) The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(2) Statistics shall include:

(A) The ages of children served;

(B) Whether the custody issue arises at a divorce or post-divorce stage;

(C) Whether psychological services were ordered; and

(D) Any other relevant information.

**History.** Acts 1999, No. 708, § 3.

### **9-13-107. Visitation rights of grandparents when the parent does not have custody of the child.**

(a) For purposes of this section:

(1) "Child" means a minor under eighteen (18) years of age who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner; and

(2) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition the circuit court that granted the guardianship or custody of a child for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if the child is in the custody or under the guardianship of a person other than one (1) or both of his or her natural or adoptive parents.

(c) Visitation with the child may be granted only if the court determines that visitation with the petitioner is in the best interest and welfare of the child.

(d)(1) An order granting or denying visitation rights to grandparents and great-grandparents under this section shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation.

(2)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.



- (B) If the court finds that the petitioner’s visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.
- (3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.
- (4) After an order granting or denying visitation has been entered under this section, a party may petition the court for the following:
  - (A) Contempt proceedings if one (1) party to the order fails to comply with the order;
  - (B) To address the issue of visitation based on a change in circumstances; or
  - (C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

**History.** Acts 2003, No. 652, § 2.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of tation Rights, 26 U. Ark. Little Rock L. Legislation, 2003 Arkansas General As- Rev. 411.  
sembly, Family Law, Grandparents’ Visi-

**CASE NOTES**

**Visitation.** Where evidence showed that the paternal grandparents allowed minor child to move in with his father in violation of a custody order, the trial court did not abuse its discretion by determining that visitation with the paternal grandparents at the present time was not in the best interest of the child. *Bier v. Mills*, 95 Ark. App. 336, 237 S.W.3d 111 (2006).

**9-13-108. Visitation — Preference of child.**

In an action under this subchapter concerning a person’s right to visitation with a minor child, the circuit court may consider the preferences of the child if the child is of a sufficient age and capacity to reason, regardless of chronological age.

**History.** Acts 2005, No. 80, § 2.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of ssembly, Family Law, 28 U. Ark. Little Legislation, 2005 Arkansas General As- Rock L. Rev. 357.

**9-13-109. Drug testing — Proceedings concerning child custody, visitation, or the welfare of a child.**

(a) For purposes of this section, “drug” means any controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq.

(b) In a proceeding concerning child custody, child visitation, or the welfare of a child, the court may order drug testing of a party upon application of a party or by its own motion.

(c) The court may assess the cost of the drug testing to a party or parties or otherwise order or arrange payment of the cost of drug testing.

**History.** Acts 2005, No. 430, § 1.

### **9-13-110. Parents who are members of the armed forces.**

(a) As used in this section:

(1) "Armed forces" means the National Guard and the reserve components of the armed forces, the United States Army, the United States Navy, the United States Marine Corps, the United States Coast Guard, and the United States Air Force, and any other branch of the military and naval forces or auxiliaries of the United States or Arkansas; and

(2) "Mobilized parent" means a parent who:

(A) Is a member of the armed forces; and

(B) Is called to active duty or receives orders for duty that is outside the state or country.

(b) A court shall not permanently modify an order for child custody or visitation solely on the basis that one (1) of the parents is a mobilized parent.

(c)(1) A court of competent jurisdiction shall determine whether a temporary modification to an order for child custody or visitation is appropriate for a child or children of a mobilized parent.

(2) The determination under this subsection (c) includes consideration of any and all circumstances that are necessary to maximize the mobilized parent's time and contact with his or her child that is consistent with the best interest of the child, including without limitation:

(A) The ordered length of the mobilized parent's call to active duty;

(B) The mobilized parent's duty station or stations;

(C) The opportunity that the mobilized parent will have for contact with the child through a leave, a pass, or other authorized absence from duty;

(D) The contact that the mobilized parent has had with the child before the call to active military duty;

(E) The nature of the military mission, if known; and

(F) Any other factor that the court deems appropriate under the circumstances.

(d) This section shall not limit the power of a court of competent jurisdiction to permanently modify an order of child custody or visitation in the event that a parent volunteers for permanent military duty as a career choice regardless of whether the parent volunteered for permanent military duty while a member of the armed forces.

**History.** Acts 2007, No. 301, § 1.

## SUBCHAPTER 2 — UNIFORM CHILD CUSTODY JURISDICTION ACT

### SECTION.

9-13-201 — 9-13-227. [Repealed.]

### 9-13-201 — 9-13-227. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 1999, No. 668, § 405. The subchapter was derived from the following sources:

9-13-201. Acts 1979, No. 91, § 1; A.S.A. 1947, § 34-2701.

9-13-202. Acts 1979, No. 91, § 2; A.S.A. 1947, § 34-2702; Acts 1989, No. 821, § 2.

9-13-203. Acts 1979, No. 91, § 3; A.S.A. 1947, § 34-2703.

9-13-204. Acts 1979, No. 91, § 4; A.S.A. 1947, § 34-2704; Acts 1987, No. 841, § 1.

9-13-205. Acts 1979, No. 91, § 5; A.S.A. 1947, § 34-2705.

9-13-206. Acts 1979, No. 91, § 6; A.S.A. 1947, § 34-2706.

9-13-207. Acts 1979, No. 91, § 7; A.S.A. 1947, § 34-2707.

9-13-208. Acts 1979, No. 91, § 8; A.S.A. 1947, § 34-2708.

9-13-209. Acts 1979, No. 91, § 9; A.S.A. 1947, § 34-2709.

9-13-210. Acts 1979, No. 91, § 10; A.S.A. 1947, § 34-2710.

9-13-211. Acts 1979, No. 91, § 11; A.S.A. 1947, § 34-2711.

9-13-212. Acts 1979, No. 91, § 12; A.S.A. 1947, § 34-2712.

9-13-213. Acts 1979, No. 91, § 13; A.S.A. 1947, § 34-2713.

9-13-214. Acts 1979, No. 91, § 14; A.S.A. 1947, § 34-2714.

9-13-215. Acts 1979, No. 91, § 15; A.S.A. 1947, § 34-2715.

9-13-216. Acts 1979, No. 91, § 16; A.S.A. 1947, § 34-2716.

9-13-217. Acts 1979, No. 91, § 17; A.S.A. 1947, § 34-2717.

9-13-218. Acts 1979, No. 91, § 18; A.S.A. 1947, § 34-2718.

9-13-219. Acts 1979, No. 91, § 19; A.S.A. 1947, § 34-2719.

9-13-220. Acts 1979, No. 91, § 20; A.S.A. 1947, § 34-2720.

9-13-221. Acts 1979, No. 91, § 21; A.S.A. 1947, § 34-2721.

9-13-222. Acts 1979, No. 91, § 22; A.S.A. 1947, § 34-2722.

9-13-223. Acts 1979, No. 91, § 23; A.S.A. 1947, § 34-2723.

9-13-224. Acts 1979, No. 91, § 24; A.S.A. 1947, § 34-2724.

9-13-225. Acts 1979, No. 91, § 25.

9-13-226. Acts 1979, No. 91, § 26; A.S.A. 1947, § 34-2725.

9-13-227. Acts 1979, No. 91, § 27.

For present law, see § 9-19-101 et seq.

## SUBCHAPTER 3 — PERSONAL RECORDS OF CHILD

### SECTION.

9-13-301. Noncustodial parent's right to child's scholastic records.

### SECTION.

9-13-302. Penalty for noncompliance.

### 9-13-301. Noncustodial parent's right to child's scholastic records.

(a) As used in this subchapter:

(1) "Child" means any person under eighteen (18) years of age;

(2) "College" means any public institution of higher education.

(b) Any noncustodial parent who has been awarded visitation rights by the court with respect to a child shall be provided upon request a copy of the current scholastic records of the child by the school district or college attended by the child.



**History.** Acts 1997, No. 345, § 1.

### 9-13-302. Penalty for noncompliance.

Refusal by any school district or college official or employee having custody or control of student scholastic records to provide such records to any person entitled to receive a copy under the provisions of this subchapter shall be an unclassified misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

**History.** Acts 1997, No. 345, § 2.

## SUBCHAPTER 4 — INTERNATIONAL CHILD ABDUCTION PREVENTION ACT

### SECTION.

9-13-401. Title.

9-13-402. Definitions.

9-13-403. Prevention of international  
child abduction.

9-13-404. Considerations of the court.

### SECTION.

9-13-405. Abduction risk factors.

9-13-406. Abduction prevention mea-  
sures.

9-13-407. Ex parte relief.

### 9-13-401. Title.

This subchapter shall be known as the “International Child Abduction Prevention Act”.

**History.** Acts 2005, No. 170, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

### 9-13-402. Definitions.

As used in this subchapter:

(1) “Child” means a minor under eighteen (18) years of age who is the subject of a custody or visitation;

(A) Matter currently pending before a court; or

(B) Order that has been issued by a court;

(2) “Court” means any circuit court of competent jurisdiction;

(3) “Custodian” means the custodial parent, legal guardian, or lawful custodian of the child as determined by a court of competent jurisdiction in the State of Arkansas;

(4) “Dual nationality” means the simultaneous possession of citizenship in two (2) countries;

(5)(A) “Human rights” means the basic principles that recognize each child’s freedom and right to be protected from abuse and neglect.

(B) “Human rights” includes the protection of children from:

(i) Abuse and neglect;

(ii) Arranged marriages;

(iii) Child labor;

- (iv) Genital mutilation;
- (v) Sexual exploitation;
- (vi) Slavery;
- (vii) Torture and the deprivation of liberty; and
- (viii) Armed conflicts.

(C) "Human rights" includes the right of children to:

- (i) Survive and develop;
- (ii) A name from birth;
- (iii) Be granted a nationality;
- (iv) Freedom of expression;
- (v) Freedom of thought, conscience, and religion; and
- (vi) A free and compulsory education;

(6) "International child abduction" means the act of taking away, enticing away, withholding, keeping, or concealing a child from his or her parent or custodian by removing the child from the United States;

(7) "Parent" means the biological or adoptive parent of a child;

(8) "Registration" means the official act of notification or documentation of the birth, name, or lineage of an individual; and

(9) "Security professional" means:

- (A) A bodyguard;
- (B) An off-duty certified law enforcement officer;
- (C) A person who holds a license issued by the State of Arkansas or another state; or
- (D) A person who has past experience or training as a professional in the area of securing the safety of persons.

**History.** Acts 2005, No. 170, § 1.

### **9-13-403. Prevention of international child abduction.**

A custodian or parent may petition or move the court under this subchapter to determine whether one (1) or more of the measures described in § 9-13-406 is necessary to protect a child from the risk of international child abduction.

**History.** Acts 2005, No. 170, § 1.

### **9-13-404. Considerations of the court.**

To determine a matter under this subchapter, the court shall consider:

- (1) The best interests of the child;
- (2) The right of a parent for frequent and continuing contact with his or her child;
- (3) The rights of a custodian under an order from a court of competent jurisdiction in the State of Arkansas;
- (4) The risk of the child's becoming a victim of international child abduction by a parent, custodian, or any person acting on the behalf of the parent or custodian, based on the court's evaluation of the risk factors described in § 9-13-405;

(5) Any obstacles to locating, recovering, or returning the child if the child is a victim of international child abduction; and

(6) The potential physical or psychological harm to the child if the child is a victim of international child abduction.

**History.** Acts 2005, No. 170, § 1.

### **9-13-405. Abduction risk factors.**

(a) To determine if there is a risk of international child abduction, the court shall consider:

(1)(A) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has committed international child abduction as defined in § 9-13-402(6).

(B) In defense of this factor, the parent or custodian may establish that he or she had a good faith belief that his or her conduct was necessary to avoid imminent harm to the child;

(2) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has threatened to commit the act of international child abduction as defined in § 9-13-402(6);

(3) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has attempted to commit the act of international child abduction as defined in § 9-13-402(6);

(4) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has taken a step that constitutes an overt act toward the accomplishment of international child abduction as defined in § 9-13-402(6);

(5)(A) Whether the parent or custodian lacks a financial reason to stay in the United States.

(B) Evidence of this factor shall include, but not be limited to, evidence that the parent or custodian is:

(i) Financially independent;

(ii) Able to work outside of the United States; or

(iii) Unemployed;

(6) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has recently engaged in activities that could facilitate the removal of the child from the United States by the parent or custodian, including, but not limited to:

(A) Quitting a job;

(B) Selling a primary residence;

(C) Terminating a lease;

(D) Closing bank accounts;

(E) Liquidating other assets;

(F) Hiding or destroying documents;

(G) Applying for a passport or visa for the parent, custodian, or child;

(H) Applying to obtain birth certificate, school records, or medical records of the child;

(I) Making travel arrangements for the parent, custodian, or child; or



(J) Purchasing airline, railway, cruise ship, or other travel tickets for the parent, custodian, or child;

(7) Whether the parent or custodian has a history of:

(A) Child abuse;

(B) Domestic violence;

(C) Marital instability; or

(D) Not cooperating with the other parent or custodian;

(8) Whether the parent or custodian has a criminal history;

(9) Whether the parent or custodian has a history of violating court orders;

(10) Whether the parent or custodian:

(A) Has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; and

(B) Lacks strong ties to the United States, regardless of whether the parent or custodian is a citizen or permanent resident of the United States; or

(11) Any other factor that the court finds to be relevant to the determination of the risk for international child abduction.

(b) If the court finds that there is credible evidence of a risk of international child abduction based on the court's consideration of the factors in subsection (a) of this section, then the court shall also consider evidence regarding the following factors to evaluate the risk of international child abduction:

(1) Whether the parent or custodian is undergoing a change in status with the United States Citizenship and Immigration Services of the Department of Homeland Security that would adversely affect his or her ability to remain legally in the United States;

(2) Whether the parent's or custodian's application for United States citizenship has been denied by the United States Citizenship and Immigration Services of the Department of Homeland Security;

(3) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has forged or presented misleading or false evidence to obtain a visa, a passport, a social security card, or any other identification card or has made any misrepresentations to the United States Government; or

(4) Whether the foreign country to which the parent or custodian has ties:

(A) Presents obstacles to the recovery and return of a child who is abducted to that country from the United States;

(B) Has no legal mechanisms for immediately and effectively enforcing an order issued by a court of this state regarding the possession of or access to the child;

(C) Has laws or practices that would:

(i) Enable the parent, custodian, or any person acting on behalf of the parent or custodian to obtain registration of the child with the country for the purposes of citizenship or for other purposes;

(ii) Enable the parent, custodian, or any person acting on the behalf of the parent or custodian to obtain for the child a passport or other travel documents from the country;

(iii) Allow entry of the child into the country without a passport or other travel documents;

(iv) Bestow nationality of the country on the child through automatic acquisition or other means;

(v) Not recognize, accept, or allow dual nationality of citizens of the country;

(vi) Enable the parent, custodian, or any person acting on the behalf of the parent or custodian to prevent the child's other parent or custodian from contacting the child without due cause;

(vii) Restrict the child's other parent or custodian from freely traveling to or exiting from the country because of that parent's or custodian's gender, nationality, or religion; or

(viii) Restrict the child's ability to legally leave the country after the child reaches the age of majority because of the child's gender, nationality, or religion;

(D) Is included by the United States Department of State on a list of state sponsors of terrorism;

(E) Is a country for which the United States Department of State has issued a travel warning to United States citizens regarding travel to the country;

(F) Does not have an embassy of the United States in the country;

(G) Is engaged in any active military action or war, including a civil war;

(H) Is a party to and compliant with the Hague Convention on the Civil Aspects of International Child Abduction, according to the most recent report on compliance issued by the United States Department of State;

(I) Does not provide for the extradition of a perpetrator of international child abduction or the return of the child to the United States; or

(J) Poses a risk that the child's physical health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations that are being committed against children.

**History.** Acts 2005, No. 170, § 1.

### **9-13-406. Abduction prevention measures.**

(a) If the court finds that it is in the best interest of the child to take measures to protect the child from international child abduction under this subchapter, then the court may take any of the following actions:

(1) Appoint a person as the sole managing custodian of the child other than the parent or custodian who presents a risk of international child abduction;

(2) Change the existing order regarding custody or visitation to avoid the risk of international child abduction;

(3) Order supervised visitation to prevent the child from becoming a victim of international child abduction for any of the following who present a risk of international child abduction under this subchapter:

(A) The parent;

(B) The custodian; or

(C) Any other individual who has been granted visitation rights;

(4) Enjoin the parent, custodian, or any person acting on behalf of the parent or custodian who presents a risk of international child abduction from:

(A) Disrupting or removing the child from the school or child care facility in which the child is enrolled; or

(B) Approaching the child at any location other than a site designated for supervised visitation;

(5) Order passport and travel controls, including controls that prohibit the parent, custodian, or any person acting on the behalf of the parent or custodian who presents a risk of international child abduction:

(A) From removing the child from this state or the United States;

(B) To surrender any passport issued in the child's name, including any passport issued in the name of both the parent and the child; and

(C) From applying on behalf of the child for a new or replacement passport or international travel visa;

(6) Require the parent or custodian who presents a risk of international child abduction to provide:

(A) To the Office of Children's Issues within the United States Department of State and the relevant foreign consulate or embassy:

(i) Written notice of the court-ordered passport and travel restrictions for the child; and

(ii) A properly authenticated copy of the court order detailing the restrictions and documentation of the parent's or custodian's agreement to the restrictions; and

(B) To the court, proof of receipt of the written notice required by subdivision (a)(6)(A)(i) of this section by the Office of Children's Issues within the United States Department of State and the relevant foreign consulate or embassy;

(7) Order the parent, custodian, or person acting on behalf of the parent or custodian who presents a risk of international child abduction to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by that person to a foreign country;

(8) Authorize the appropriate law enforcement agencies to take measures to prevent the child from becoming a victim of international child abduction; or

(9) Include in the court's order provisions that:

(A) Identify the United States as the country of habitual residence of the child;



(B) Define the basis for the court's exercise of jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(C) State the manner in which notice and opportunity to be heard were given to other parties to the matter, including the parent or custodian;

(D) State a thorough description of the following:

- (i) Who has custody of the child;
- (ii) Who has visitation rights with the child;
- (iii) Whose visitation rights must be supervised;
- (iv) The specific requirements of any ordered supervised visitation as applied to each person with visitation rights; and
- (v) Any other limitations regarding custody or visitation; and

(E) State that a party's violation of the order may subject the party to a civil penalty, a criminal penalty under § 5-26-501 et seq., or to both civil and criminal penalties.

(b)(1) If a court orders supervised visitation under subdivision (a)(3) of this section, the court shall order the supervised visitation to continue until the court finds that supervised visitation is no longer necessary or until the child reaches eighteen (18) years of age.

(2) If the court orders supervised visitation under subdivision (a)(3) of this section, the court's order regarding supervised visitation shall require:

- (A) That the supervisor be present with the child at all times;
- (B) That the supervised visitation takes place at all times at a visitation center or other location that is adequate to prevent the child from becoming a victim of international child abduction; and
- (C) The usage of all necessary security professionals, protocols, procedures, or devices that are:
  - (i) Adequate to prevent the child from becoming a victim of international child abduction;
  - (ii) Available in the geographic area of the supervised visitation location; and
  - (iii) Recognized in the security profession as effective in securing a location and the safety of a person.

(c) The court shall consider the requests of the parent or custodian who does not pose a risk of international child abduction when determining the best methods to prevent the international abduction of a child at risk of becoming a victim of international child abduction.

**History.** Acts 2005, No. 170, § 1.

### **9-13-407. Ex parte relief.**

(a) A court shall immediately conduct an ex parte hearing if a petitioner:

- (1) Alleges that:
  - (A) An emergency exists; and

(B) His or her child is in imminent danger of becoming a victim of international child abduction as defined under § 9-13-402(6); and

(2) Requests an ex parte hearing on the issue seeking temporary and immediate relief.

(b) At an ex parte hearing under this section, a court may grant the temporary relief necessary to prevent the child from becoming a victim of international child abduction until a full hearing on the matter can be held if the petitioner presents credible evidence that supports his or her allegation that his or her child is in imminent danger of becoming a victim of international child abduction.

(c) A temporary order issued under this section shall not be effective for more than ninety (90) days.

**History.** Acts 2005, No. 170, § 1.

## CHAPTER 14

### SPOUSAL AND CHILD SUPPORT

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ENFORCEMENT GENERALLY.
3. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT. [REPEALED.]
4. STATE COMMISSION ON CHILD SUPPORT.
5. HEALTH CARE COVERAGE.
- 6-7. [RESERVED.]
8. CENTRALIZED CLEARINGHOUSE.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

Handling of costs for withholding, § 16-110-417.

#### RESEARCH REFERENCES

**A.L.R.** Laches or acquiescence as defense barring recovery of arrearages. 5 A.L.R.4th 1015.

Removal by custodial parents of child from jurisdiction in violation of court order justifying termination, suspension, or reduction of child support. 8 A.L.R.4th 1231.

Wife's liability for necessities furnished husband. 11 A.L.R.4th 1160.

Legal authority of person solemnizing marriage. 13 A.L.R.4th 1323.

Gender-based classification in laws proscribing nonsupport of spouse or child. 14 A.L.R.4th 717.

Necessity, in action against husband for necessities furnished wife, of proving husband's failure to provide necessities. 19 A.L.R.4th 432.

Validity and enforceability of escalation clause in divorce decree relating to alimony and child support. 19 A.L.R.4th 830.

Modern status of rule that husband is primarily or solely liable for necessities furnished wife. 20 A.L.R.4th 196.

"Extraordinary" or similar medical or dental expenses for purposes of divorce decree requiring one parent to pay such expenses for child in custody of other parent. 39 A.L.R.4th 502.

Post-secondary education as within nondivorced parent's child support obligation. 42 A.L.R.4th 819.

Stepparent's postdivorce duty to support stepchild. 44 A.L.R.4th 520.

Cohabitation, divorced or separated spouse's living with member of opposite

sex as affecting other spouse's obligation of alimony or support under separation agreement. 47 A.L.R.4th 38.

Postmajority disability as reviving parental duty to support child. 48 A.L.R.4th 919.

Court's authority to reinstitute parent's support obligation after terms of prior decree have been fulfilled. 48 A.L.R.4th 952.

Right to attorney's fees in proceeding for modification of child custody or support order after absolute divorce. 57 A.L.R.4th 710.

Power to modify spousal support award for a limited term, issued in conjunction with divorce, so as to extend the term or make the award permanent. 62 A.L.R.4th 180.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Attributing undisclosed income to parent or spouse for purposes of making child or spousal support award. 70 A.L.R.4th 173.

Rights and obligations resulting from human artificial insemination. 83 A.L.R.4th 295.

Parent's child support liability as affected by other parent's fraudulent misrepresentation regarding sterility or use of birth control, or refusal to get an abortion. 2 A.L.R.5th 301; 2 A.L.R.5th 337.

Authority of court, upon entering default judgement, to make orders for child custody or support which were not specifically requested in pleadings of prevailing party. 5 A.L.R.5th 863.

Spouse's right to set off debt owed by other spouse against accrued spousal or child support payments. 11 A.L.R.5th 259.

Obligor parent's death as affecting decree for support of child. 14 A.L.R.5th 557.

Consideration of obligated spouse's earnings from overtime or "second job" held in addition to regular full-time employment in fixing alimony or child support awards. 17 A.L.R.5th 143.

Loss of income due to incarceration as affecting child support obligation. 27 A.L.R.5th 540.

Treatment of depreciation expenses

claimed for tax or accounting purposes in determining ability to pay child or spousal support. 28 A.L.R.5th 46.

Right to credit on child support payments for Social Security or other government dependency payments made for benefit of child. 34 A.L.R.5th 447.

Support provisions of judicial decree or order as limit of parent's liability for expenses of child. 35 A.L.R.5th 757.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters. 38 A.L.R.5th 69.

Decrease in income of obligor spouse following voluntary termination of employment as basis for modification of child support award. 39 A.L.R.5th 1.

Alimony or child-support awards as subject to attorney's liens. 49 A.L.R.5th 595.

What voluntary acts of child, other than marriage or entry into the military service, terminate parent's obligation to support. 55 A.L.R.5th 557.

Application of child-support guidelines to cases of joint-, split-, or similar shared-custody arrangements. 57 A.L.R.5th 389.

Consideration of obligor spouse's or parents' personal-injury recovery or settlement in fixing alimony or child-support. 59 A.L.R.5th 489.

Basis for imputing income for purpose of determining child support where obligor spouse is voluntarily unemployed or underemployed. 76 A.L.R.5th 191.

**Am. Jur.** 24A Am. Jur. 2d, Divorce & S., §§ 607, 608 et seq. and § 1001 et seq.

59 Am. Jur. 2d, Parent & C., § 41 et seq. and § 72 et seq.

**Ark. L. Rev.** Notes, *Towery v. Towery*: Has the "Flexible" Child Support Rule Lost Its Stretch?, 39 Ark. L. Rev. 539.

**C.J.S.** 2 C.J.S., Adoption, § 139.

7 C.J.S., Atty & C, § 82.

7A C.J.S., Atty & C, § 381.

27C C.J.S., Divorce, § 665 et seq.

28 C.J.S., Dom Abuse, §§ 13, 19.

28 C.J.S., Dower, § 5.

67A C.J.S., Parent & C, §§ 49, 51, 83, 96.

**U. Ark. Little Rock L.J.** Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.



## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 9-14-101. Implied consent to jurisdiction for child support and maintenance or to establish paternity — Service of process.
- 9-14-102. Wage assignment and deduction.
- 9-14-103. Quarterly report of funds, monies, etc., received for child support.
- 9-14-104. Failure to support — Defense of insanity to contempt proceedings.

## SECTION.

- 9-14-105. Petition for support.
- 9-14-106. Noncustodial parents — Amount of support.
- 9-14-107. Change in payor income warranting modification.
- 9-14-108. Transfer between local jurisdictions.
- 9-14-109. Automatic assignment of rights.
- 9-14-110. Arkansas Registry of Child Support Orders.

**Cross References.** Alimony and child support — bond — method of payment, § 9-12-312.

Maintenance and attorney's fees, § 9-12-309.

Modification of allowance for alimony and maintenance, § 9-12-314.

**Effective Dates.** Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1989, No. 383, § 5: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the recent court interpretations of support law for minor children have led to lack of uniformity in collection and enforcement and that it is in the best interests of the citizens of this state that all persons financially able to do so should contribute to the support of their minor

child. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 367, § 6: approved Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected, modified and enforced in the most expedient manner for all children in this state; that the smooth transition from current requirements to those of this act require that the provisions become effective upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1991, No. 870, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that smooth transition from current requirements to those of this act require that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 337, § 2: Mar. 10, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that children are not receiving the amount of child support to which they are entitled under current law; that child support is an essential part of a custodial parent's income that is necessary to provide the basic needs for the child; and that this act is immediately necessary to prevent children from being denied the support they are entitled to under law and to prevent the undue delay

of changes in the award of child support. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**A.L.R.** Adequacy or excessiveness of money awarded as child support and alimony. 27 A.L.R.4th 864, 27 A.L.R.4th 1038.

**U. Ark. Little Rock L.J.** Sullivan, The

Need for a Business or Payroll Records Affidavit for Use in Child Support Matters, 11 U. Ark. Little Rock L.J. 651.

Survey, Civil Procedure, 12 U. Ark. Little Rock L.J. 603.

### **9-14-101. Implied consent to jurisdiction for child support and maintenance or to establish paternity — Service of process.**

(a) Any person who establishes or acquires a marital domicile in this state, who contracts marriage in this state, or who becomes a resident of this state while legally married, and subsequently absents himself or herself from the state leaving a dependent natural or adopted child in this state and fails to support the child as required by the laws of this state, is deemed to have consented and submitted to the jurisdiction of the courts of this state as to any cause of action brought against that person for the support and maintenance of the child.

(b) In an action to establish paternity or to establish or enforce a child support obligation in regard to a child who is the subject of the action, a person is deemed to have consented and submitted to the jurisdiction of the courts of this state if any of the following circumstances exists:

(1) The person engaged in sexual intercourse with the child's mother in this state during the period of the child's conception or the affected child was conceived in this state;

(2) The person resides or has resided with the child in this state.

(c) Service of process upon any person who is deemed by this section to have consented and submitted to the jurisdiction of the courts of this state may be made pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

**History.** Acts 1969, No. 297, §§ 1, 2; A.S.A. 1947, §§ 34-2446, 34-2447; Acts 1989, No. 508, §§ 1, 2.

### RESEARCH REFERENCES

**Ark. L. Rev.** Conflict of Laws: Arkansas, 32 Ark. L. Rev. 1.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Civil Procedure, 1 U. Ark. Little Rock L.J. 131.

Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

### CASE NOTES

#### **Jurisdiction.**

Court had personal jurisdiction over a husband even though he was residing in another state when the suit was filed, where Arkansas was the parties' last matrimonial domicile, the wife and the chil-

dren continued to reside in the state, and the husband left the state voluntarily thereby failing to support his dependent children. *Bunker v. Bunker*, 261 Ark. 851, 552 S.W.2d 641 (1977).

### **9-14-102. Wage assignment and deduction.**

(a) As used in this section:

(1) "Political subdivision thereof" means all cities of the first class, cities of the second class, incorporated towns and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts; and

(2) "State of Arkansas" means all agencies, boards, commissions, institutions, and other instrumentalities of the state.

(b)(1) When a person is ordered by a court of record to pay for the support of his or her children under eighteen (18) years of age, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, shall order his or her employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to the person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its order for the support of the children under eighteen (18) years of age.

(2) In determining good cause, the court may take into consideration evidence of the degree of the respondent's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the support order.

(c)(1) Any order for support that orders that the payment be made to the support collection unit shall order the respondent's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to the person, the entitlement to which is based upon remuneration for



employment, past or present, such amounts as the court may find to be necessary to comply with its orders for the support of the children under eighteen (18) years of age.

(2)(A) However, any such support order shall provide that no such deduction shall be made unless and until the support collection unit established by the appropriate social services district has determined that the person is delinquent in making a specified number of payments determined by the court in the order and a copy of the order and determination has been served upon the person's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States.

(B) Additionally, the person shall be given notice of the determination at least fifteen (15) days prior to service of the order and determination on the employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States.

(C) If the person pays all arrearages within the fifteen-day period, the order and determination shall not be served and no deduction shall be required by reason of the determination, but the payment shall not affect or otherwise limit any determination made as a result of any subsequent delinquencies.

(3) The employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States shall deduct the amount as ordered from the moneys due or payable and forward it monthly as directed in the order.

(d)(1) The court shall require the person to provide the court with his or her full name, address, and social security number.

(2) However, a social security number may be required only when permitted under federal law.

**History.** Acts 1979, No. 722, §§ 1, 2; 1983, No. 594, § 1; A.S.A. 1947, §§ 34-2424.1, 34-2424.2.

**Publisher's Notes.** The operation of this section may be affected by § 9-14-217.

## CASE NOTES

### **Sovereign Immunity.**

This section affords no basis for jurisdiction over the state. *Department of Human Servs. v. Crunkleton*, 303 Ark. 21, 791 S.W.2d 704 (1990).

This section, which provides for wage assignments and deductions for child sup-

port, merely provides a means by which the payment of child support can be more effectively enforced; it is not a waiver of sovereign immunity. *Department of Human Servs. v. Crunkleton*, 303 Ark. 21, 791 S.W.2d 704 (1990).

### **9-14-103. Quarterly report of funds, moneys, etc., received for child support.**

(a)(1)(A) Upon application of any interested person to any judge of any court of record having jurisdiction of the cause of action, the court

may require any person receiving as guardian of the person, either by adoption of law or order of any court, any funds, moneys, credits, goods, chattels, or anything of value for the support, maintenance, care, or custody of a minor child to file a verified quarterly report of all moneys or goods received therefor.

(B) The report shall state the items, goods, or services, the date purchased, and from whom purchased.

(2) The quarterly report shall be filed with the clerk of the court or other body rendering the original order or decree between the first and fifteenth day of the calendar month immediately following the end of each calendar quarter.

(b)(1) This section shall apply to all awards, orders, or decrees made by any court or legally constituted body making such award.

(2) Any report required to be made under this section shall be a public record.

(c) It is the purpose of this section and the intention of the General Assembly that any funds, moneys, credits, chattels, goods, or anything of value that have been or are ordered, decreed, adjudged, adjudicated, or awarded for the use and benefit of any minor child shall be used and inure solely to the use and benefit of the minor child for which it is or was ordered paid.

**History.** Acts 1969, No. 301, §§ 1-3;  
A.S.A. 1947, §§ 34-2443 — 34-2445.

## CASE NOTES

### ANALYSIS

Accounting.  
Accounting Not Warranted.

#### **Accounting.**

An accounting is not viewed as a vehicle by which the non-custodial parent could discover whether child-support payments are being properly used, rather, the court, in its discretion, can order an accounting upon a showing that it is warranted. *Schueller v. Schueller*, 86 Ark. App. 347, 185 S.W.3d 107 (2004).

#### **Accounting Not Warranted.**

Trial court did not err in dismissing husband's petition for a quarterly accounting of child support payments where he failed to demonstrate an accounting was warranted; husband paid \$570 per month, and wife paid \$250 per month for medical insurance alone, leaving her with a little over \$300 per month to provide the son with shelter, food, clothes, and any other day-to-day necessity. *Schueller v. Schueller*, 86 Ark. App. 347, 185 S.W.3d 107 (2004).

## **9-14-104. Failure to support — Defense of insanity to contempt proceedings.**

(a) Whenever a person pleads insanity in contempt proceedings before a circuit judge for failure to make family support payments as ordered by the circuit judge or whenever the circuit judge has reason to believe that the defense of insanity will be raised or become an issue in the case, the circuit judge shall postpone all proceedings in the cause. He or she shall forthwith commit the contemnor to the Arkansas State

Hospital where the contemnor will remain under observation for such time as the court will direct, but not exceeding one (1) month.

(b) The circuit judge shall order the director or his or her designee of the Arkansas State Hospital to direct some competent physician or physicians employed by the Arkansas State Hospital to conduct observation and investigations of the mental conditions of the contemnor and to prepare a written report thereof. On issuing the order, the circuit judge shall direct the circuit clerk to notify the attorneys in the case of the issuance of the order.

(c) The action of the court in committing the contemnor for examination shall not preclude the plaintiff or contemnor from calling expert witnesses to testify at the trial. The expert witnesses shall have free access to the contemnor for the purposes of observation and examination during the period of his or her commitment to the Arkansas State Hospital for examination.

(d) The Arkansas State Hospital shall indicate separately the contemnor's mental condition at the time of the alleged act of contempt. This report shall be certified by the director or his or her designee of the Arkansas State Hospital, under his or her seal, or by an affidavit duly subscribed and sworn to by him or her before a notary public who shall add his or her certificate and affix his or her seal thereto.

(e) It is the specific intent of this section only to affect those laws pertaining to mental health. Nothing in this section shall be deemed to repeal or modify the provisions of §§ 20-64-701 — 20-64-707. No other laws shall be affected in any manner, nor shall the inclusion of those laws within the mental health laws in any way repeal or affect those laws as they otherwise apply.

**History.** Acts 1971, No. 433, ch. 6, § 12; A.S.A. 1947, §§ 34-2449, 34-2449n.

**Publisher's Notes.** Acts 1971, No. 433, § 1, provided: "It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of

these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to the State Hospital, mental health, and mentally ill persons."

## 9-14-105. Petition for support.

(a) The circuit courts in the several counties in this state shall have exclusive jurisdiction in all civil cases and matters relating to the support of a minor child or support owed to a person eighteen (18) or older that accrued during that person's minority.

(b) The following may file a petition to require the noncustodial parent or parents of a minor child to provide support for the minor child:

- (1) Any parent having physical custody of a minor child;
- (2) Any other person or agency to whom physical custody of a minor child has been given or relinquished;



(3) A minor child by and through his or her guardian or next friend;  
or

(4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the parent or person to whom physical custody has been relinquished or awarded is receiving assistance in the form of Aid to Families with Dependent Children, Medicaid, Title IV-E of the Social Security Act — Foster Care, or has contracted with the department for the collection of support.

(c) Any person eighteen (18) years of age or above to whom support was owed during his or her minority may file a petition for a judgment against the nonsupporting parent or parents. Upon hearing, a judgment may be entered upon proof by a preponderance of the evidence for the amount of support owed and unpaid.

(d) As used in this subchapter:

(1) "Minor child" means a child less than eighteen (18) years of age;  
and

(2) "Noncustodial parent" means a parent who resides outside the household or institution in which the minor child resides.

(e) Any action filed pursuant to this subchapter may be brought at any time up to and including five (5) years from the date the child reaches eighteen (18) years of age.

(f) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter and shall retroactively apply to all child support orders now existing.

**History.** Acts 1989, No. 383, § 1; 1991, No. 870, § 1; 1993, No. 1242, § 1; 1995, No. 1184, § 6.

**U.S. Code.** Title IV-E of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 670 et seq.

**Cross References.** Assignment of right to child support to Office of Child Support Enforcement of the Revenue Division of the Department of Human Services by recipient of medicaid assistance, § 20-77-109.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

Moore, Child Support Arrearages: What Statute of Limitations (If Any) Applies?, 19 U. Ark. Little Rock L.J. 487.

## CASE NOTES

### ANALYSIS

Death.  
Jurisdiction.  
Legal Custody.  
Res Judicata.  
Retroactive Child Support.  
Standing.  
Statute of Limitations.

### Death.

Because a minor child had died, a mother was unable to bring a child support action against a father under subsection (b) of this section since the mother no longer had physical custody of the child; moreover, the father's obligation to support the child terminated upon her death under § 9-14-237(a)(1)(B)(iii). *Hardy v.*

Wilbourne, 370 Ark. 359, 259 S.W.3d 405 (2007), cert. denied, — U.S. —, 128 S. Ct. 1245, 170 L. Ed. 2d 65 (2008).

### **Jurisdiction.**

If a chancery court has subject matter jurisdiction to decide a case under the Arkansas Constitution, the circuit court has no power to review that decision. *Partlow v. Darling Store Fixtures*, 314 Ark. 87, 858 S.W.2d 695 (1993).

The circuit court was without jurisdiction to review a collateral administrative order defining the manner of paying child support issued by the chancery court. *Partlow v. Darling Store Fixtures*, 314 Ark. 87, 858 S.W.2d 695 (1993).

The chancery court has exclusive jurisdiction of all cases involving matters of child support; neither the municipal nor circuit court has concurrent jurisdiction with chancery court to enforce an agreement for child support. *Boren v. Boren*, 318 Ark. 378, 885 S.W.2d 852 (1994).

Circuit court cannot decide a claim of breach of contract or otherwise enforce a child support agreement since under subsection (a) of this section it does not have subject-matter jurisdiction. *Granquist v. Randolph*, 326 Ark. 809, 934 S.W.2d 224 (1996).

Regardless of the context in which a support order is entered, whether divorce, paternity, abandonment, or any other situation, a trial court has the power to enter a child-support order; thus, where the father was held in contempt for failure to pay support and appealed, even though the trial court did not have jurisdiction to dissolve the marriage because there was no corroboration of residence, the trial court had jurisdiction to enter contempt orders for the father's failure to pay support. *Rogers v. Rogers*, 80 Ark. App. 430, 97 S.W.3d 429 (2003).

### **Legal Custody.**

Even though child custody and child support are separate and distinct issues, and this section only addresses child support, the chancery court did not abuse its discretion in requiring a father to seek legal custody of the parties' child before the court would award child support. *Brown v. Cleveland*, 328 Ark. 73, 940 S.W.2d 876 (1997).

### **Res Judicata.**

Children's claim for unpaid child support, which they could not have brought until after they reached eighteen, was barred because it was not a different one from that which was barred when their mother failed to bring it within the then-applicable five-year limitation period. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

### **Retroactive Child Support.**

This section provided the adult plaintiff with a cause of action to recover unpaid child support accrued during his minority. *Fonken v. Fonken*, 334 Ark. 637, 976 S.W.2d 952 (1998).

### **Standing.**

Prior to 1989, there was no statutory authority for children to pursue a child support claim. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

### **Statute of Limitations.**

This section contemplates one support obligation which may be pursued by different persons at different times; the limitation period is applicable to all of them. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

**Cited:** *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992); *State Office of Child Support Enforcement v. Harris*, 87 Ark. App. 59, 185 S.W.3d 120 (2004).

## **9-14-106. Noncustodial parents — Amount of support.**

(a)(1)(A) In determining a reasonable amount of support initially or upon review to be paid by the noncustodial parent or parents, the court shall refer to the most recent revision of the family support chart.

(B) It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

(C) Only upon a written finding that the application of the family support chart would be unjust or inappropriate as determined under

established criteria set forth in the family support chart shall the presumption be rebutted.

(2)(A) The court may provide for a partial abatement or reduction of the stated child support amount for any period of extended visitation with the noncustodial parent.

(B) The court shall consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent that are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents.

(C) Abatement or reduction of the chart amount and justification of the abatement or reduction shall be clearly set forth in the written findings of the court.

(D)(i) The noncustodial parent shall provide written notification within ten (10) days when abatement or reduction of child support should occur due to extended visitation to the clerk of the court responsible for receipt of the child support payment, the noncustodial parent's employer, if income withholding is in effect, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when applicable.

(ii) It is the responsibility of the noncustodial parent to notify the clerk of the court responsible for receipt of the child support payment, the noncustodial parent's employer, if income withholding is in effect, and the office, when applicable, when abatement or reduction should stop and payment of child support should resume.

(E) If the noncustodial parent fails to exercise extended visitation periods, the child support shall not be abated or reduced.

(b) Subsequent to the finding by the court that the defendant should be ordered to pay support for the minor child, the court shall follow the same procedure and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit courts in cases involving separation or divorce between the parents of the child.

**History.** Acts 1989, No. 383, § 1; 1993, No. 607, § 1; 1995, No. 1184, § 7; 1997, No. 1296, § 12.

## RESEARCH REFERENCES

**A.L.R.** Right to credit on child support arrearages for time parties resided together after separation or divorce. 104 A.L.R.5th 605.

Right to credit against child support arrearages for time child spent in custody of noncustodial parent, other than for visitation or under court order, without custodial parent's approval. 108 A.L.R.5th 359.

Right to credit against child support

arrearages for time child lived in custody of noncustodial parent, other than for visitation, where custodial parent's approval was not in issue or was disputed by parties. 112 A.L.R.5th 185.

Right to credit on child support for health insurance, medical, dental, and orthodontic expenses paid for child's benefit while child is not living with obligor parent. 1 A.L.R.6th 493.

Right to credit on child support for con-



tributions to educational expenses of child while child is not living with obligor parent. 2 A.L.R.6th 439.

Right to credit on child support for contributions to travel expenses of child while child is not living with obligor parent. 3 A.L.R.6th 641.

Right to credit on child support for continued payments to custodial parent for child who has reached majority or other-

wise become emancipated. 4 A.L.R.6th 531.

Retirement of husband as change of circumstances warranting modification of divorce decree-Conventional retirement at 65 years of age or older. 11 A.L.R.6th 125.

## CASE NOTES

### ANALYSIS

In General.  
 Agreements.  
 Contempt Power.  
 Determination of Income.  
 Equitable Estoppel.  
 Failure to Exercise Extended Visitation.  
 Judgment Interpretation.  
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#### In General.

Ex-husband's claim that his ex-wife was barred by the compulsory-counterclaim provision of Ark. R. Civ. P. 13(a) from recovering the education expenses because she did not raise the issue during a 2002 contempt action ex-husband initiated was rejected as ex-husband was not filing a pleading and asserting a claim under Ark. R. Civ. P. 7 at that time but, rather, he was filing a motion asking the trial court to enforce a previous order; Ark. R. Civ. P. 13(a) did not apply and, when his ex-wife filed a counter-petition in May 2004 to enforce the decree and recover tuition and education expenses, she was not barred by the compulsory-counterclaim rule because she did not raise the education-expense issue in response to the ex-husband's first petition filed in 2002. *Morsy v. Deloney*, 92 Ark. App. 383, 214 S.W.3d 285 (2005).

Trial court properly dismissed client's malpractice action even though the attorney committed malpractice by failing to perfect client's appeal of the trial court's child-support award as the client would not have prevailed on appeal because the trial court properly adhered to guidelines of Arkansas Family Support Chart when it deviated from presumptive amount; although the trial court was required to consider the guidelines, the court did not

have to use the chart amount where the circumstances of the parties indicated another amount would be more appropriate. *Davis v. Bland*, 367 Ark. 210, 238 S.W.3d 924 (2006).

Even though children injured in an explosion had a trust worth about 1 million dollars that met their needs, the father was still ordered to pay child support because this was not a substitute for his income; the father had a legal and moral duty to support his children, even though they had the property to do so themselves. *Lee v. Lee*, 95 Ark. App. 69, 233 S.W.3d 698 (2006).

Trial court did not abuse its discretion in ordering that a retroactive award of child support be set aside in an interest bearing account to address any needs of the children that might arise because to award that amount to the mother would result in a windfall; it was within the trial court's discretion whether to award retroactive support because such an award was not mandatory. *Gilbow v. Travis*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 194 (Apr. 8, 2009).

#### Agreements.

Where a mother and the Office of Child Support Enforcement entered into a proposed agreement regarding child support arrearages, it was not error to refuse to follow the agreement, because the trial court was not bound by an independent agreement concerning child support and the trial court retained jurisdiction over child support. *Roark v. Office of Child Support Enforcement*, 101 Ark. App. 382, 278 S.W.3d 114 (2008).

#### Contempt Power.

Although the parties had agreed to each pay one-half the college expenses of any child that chose to attend college, where

the mother later declined to pay her half, the trial judge clearly erred in holding the mother in contempt because she demonstrated by more than a preponderance of the evidence that her failure to reimburse the father for college expenses was not due to "willful obstinacy" but financial inability coupled with ill health; also relevant and material were the mother's assertions that their adult daughter's illness required her to take care of their granddaughter and assume some of those financial responsibilities, and the trial judge's exclusion of the latter evidence unfairly interfered with the mother's defense and constituted an abuse of discretion. *Aswell v. Aswell*, 88 Ark. App. 115, 195 S.W.3d 365 (2004).

#### **Determination of Income.**

A noncustodial father was not entitled to a reduction of his child support obligation since he failed to meet his burden to show a change in circumstances where he did not supply sufficient information to enable the chancellor to determine his income. *Woodson v. Johnson*, 63 Ark. App. 192, 975 S.W.2d 880 (1998).

Trial court did not err by refusing to require a former husband to pay a certain amount of net income for child support because there was no meeting of the minds regarding the definition of the term "net income" when the agreement was made; moreover, such an independent agreement was not binding on the trial court. *Adametz v. Adametz*, 85 Ark. App. 401, 155 S.W.3d 695 (2004).

#### **Equitable Estoppel.**

In a child support arrearages case, the defense of equitable estoppel applied because the mother initiated a conversation regarding father's relinquishment of his parental rights in exchange for waiving child support, the father relied on the mother's conduct to his detriment, and he was unaware that his obligation was still accruing. *Chitwood v. Chitwood*, 92 Ark. App. 129, 211 S.W.3d 547 (2005).

Mother was not estopped from seeking child support because (1) the father could not rely on the mother's promise not to seek child support in exchange for his promise not to challenge paternity as the father's duty of child support could not be bartered away permanently to the detriment of the child; and (2) the trial court

always retained jurisdiction and authority over child support as a matter of public policy and, no matter what an independent contract stated, either party had the right to request modification of a child-support award. *McGee v. McGee*, 100 Ark. App. 1, 262 S.W.3d 622 (2007).

Order relieving a mother of her past-due child support obligation was upheld where the trial court found the existence of an agreement that the father would forego child support in exchange for the maternal grandparents' help with the children's expenses; the father only attempted to repudiate the arrangement after the maternal grandparents had fully performed. *Wilhelms v. Sexton*, 102 Ark. App. 46, 280 S.W.3d 565 (2008).

#### **Failure to Exercise Extended Visitation.**

When a noncustodial parent failed to exercise extended visitation under the provisions of a per curiam order, the custodial parent was not entitled to be compensated accordingly. *Carlton v. Carlton*, 316 Ark. 618, 873 S.W.2d 801 (1994).

Trial court did not err in holding that a husband was responsible for \$9,140 in child support arrearages because although it was clear that the husband did not receive his visitation on a regular basis, he did not return to the trial court to attempt to terminate his child support obligation. Both the husband's former wife and one of his children testified that he made no effort to contact the child for visitation, a fact that he partly admitted. *Lyons v. McInvale*, 98 Ark. App. 433, 256 S.W.3d 512 (2007).

#### **Judgment Interpretation.**

In a dispute involving a child support order, a trial court's interpretation of its own decree was clearly erroneous because the decree did not provide that a father was subject to automatic increases of child support payments every year past 2000. *Brandt v. Brandt*, 103 Ark. App. 66, 286 S.W.3d 202 (2008).

#### **Modification.**

Where evidence showed that the parties' oldest child had graduated from high school, had reached the age of majority, and was no longer living under the same roof as the mother, the father made a prima facie showing of a change of circumstances sufficient to warrant modification



of child support. *Harris v. Harris*, 82 Ark. App. 321, 107 S.W.3d 897 (2003).

In entering an order to modify child support, the trial court properly considered that the mother, who was also a physician and a farm owner, had a negative income during a certain time; however, the trial court erroneously failed to consider in its support calculations that beginning the following year, the mother's income was positive. *Huey v. Huey*, 96 Ark. App. 188, 239 S.W.3d 547 (2006).

Where the evidence showed that the father made about \$67,000 per year, but was unable to work full time due to child care obligations, a child support increase in the amount of \$173 per week, plus arrearages, was proper because the child-support chart was referenced, testimony regarding the father's weekly income was heard, and documentary evidence was considered. *Uttley v. Bobo*, 97 Ark. App. 15, 242 S.W.3d 638 (2006).

Alleged errors relating to the calculation of the income of former spouses in modifying child support were not reversible because the wife invited the trial court to rely on and use certain documents, she failed to challenge an alterna-

tive basis for a trial court's decision not to include a distribution in her former husband's income, and she failed to offer a developed argument or citation to authority, except in a general nature. *Parker v. Parker*, 97 Ark. App. 298, 248 S.W.3d 523 (2007).

Trial court erred in modifying a divorce decree by ordering the payment of child support from the proceeds of a settlement that the wife was to receive as part of a class-action lawsuit where the amount of money the wife would receive as a result of the settlement, and when she would receive it, were unknown; the issue was not yet ripe. *Stuart v. Stuart*, 99 Ark. App. 358, 260 S.W.3d 740 (2007).

Over 12 years had passed since the divorce decree awarding no child support was entered; in that time, the mother testified that the children had gotten older, played ball, had medical expenses, and quickly outgrew clothing and shoes. There were sufficient changed circumstances to warrant an increase in child support; thus, the trial court did not err in modifying the father's child-support obligation. *McGee v. McGee*, 100 Ark. App. 1, 262 S.W.3d 622 (2007).

### **9-14-107. Change in payor income warranting modification.**

(a)(1) A change in gross income of the payor in an amount equal to or more than twenty percent (20%) or more than one hundred dollars (\$100) per month shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions.

(2)(A)(i) Any time a court orders child support, the court shall order the noncustodial parent to provide proof of income for the previous calendar year to:

(a)(1) The custodial parent.

(2) The court shall also order the noncustodial parent to provide proof of income for a previous calendar year whenever requested in writing by certified mail by the custodial parent, but not more than one (1) time a year; and

(b) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, when applicable.

(ii) Whenever a custodial parent requests in writing that the noncustodial parent provide proof of income, the noncustodial parent shall respond by certified mail within fifteen (15) days.

(B) If the noncustodial parent fails to provide proof of income as directed by the court or fails to respond to a written request for proof



of income, the noncustodial parent may be subject to contempt of court.

(C) If a custodial parent or the office has to petition the court to obtain the information, the custodial parent or the office may be entitled to recover costs and a reasonable attorney's fee.

(D) Once notified of an increase, the office shall file a motion within thirty (30) days for modification of child support.

(E)(i) All income information received by the office shall be used only as permitted and required by law.

(ii) All income information received by the custodial parent shall be treated confidentially and used for child support purposes only.

(b)(1) A change in a parent's ability to provide health insurance as defined in subdivision (b)(2) of this section shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the guidelines for child support and the family support chart.

(2) For purposes of this section, "ability to provide health insurance" means that a parent can obtain health insurance through his or her employer or other group health insurance.

(3) In no event shall eligibility for or receipt of Medicaid be considered adequate provision for the child's health care needs in a child support award.

(c)(1) The office shall at least each three (3) years, without regard to a material change of circumstances, review cases in its enforcement caseload where there has been an assignment under Title IV-A of the Social Security Act or upon the request of either parent and petition for adjustment if appropriate.

(2) An inconsistency between the existent child support award and the amount of child support that results from application of the family support chart shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions unless:

(A) The inconsistency does not meet a reasonable quantitative standard established by the State of Arkansas in accordance with subsection (a) of this section; or

(B) The inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change of circumstances that resulted in the rebuttal of the guidelines amount.

(d) Any modification of a child support order that is based on a change in gross income of the noncustodial parent shall be effective as of the date of filing a motion for increase or decrease in child support unless otherwise ordered by the court.

(e) When a person is ordered by a court of record to pay for the support of his or her children, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, may order periodic drafts of his or her accounts at a financial institution to deduct moneys due or payable for child support in amounts the court may find to be necessary to comply with its order for the support of the children.

**History.** Acts 1991, No. 367, §§ 1, 2; 1993, No. 1242, § 12; 1995, No. 1184, § 39; 1997, No. 1296, § 15; 2001, No. 1248, § 4; 2003, No. 337, § 1; 2005, No. 1962, § 19; 2007, No. 713, § 1; 2009, No. 551, §§ 1, 2.

**Amendments.** The 2007 amendment substituted “a parent’s ability to provide health insurance” for “the noncustodial

parent’s health insurance status” in (b)(1); in (b)(2), substituted “ability to provide health insurance” for “health insurance status” and “a parent” for “noncustodial parent”; and substituted “Medicaid” for “medicaid” in (b)(3).

The 2009 amendment deleted (b)(2)(B), inserted (c)(1), and redesignated subdivisions accordingly.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2003 Arkansas General Assembly, Family Law, Proof of Income, 26 U. Ark. Little Rock L. Rev. 407.

## CASE NOTES

### ANALYSIS

Change of Circumstances Found.

Deviation from Chart.

Disability.

Employment Status.

Retroactive Award.

Sufficient Change.

### Change of Circumstances Found.

There was a statutory change of circumstances in the case under subsection (c) of this section, because when applying the family support chart to the mother’s income the result was obviously something greater than zero, the father could not forever waive his children’s right to child support, and there was no legal basis why the mother should not now be ordered to pay support for her children, who were in the father’s primary custody; neither of the two exceptions set forth in subsection (c) of this section was applicable. *Office of Child Support Enforcement v. Burroughs*, 100 Ark. App. 128, 265 S.W.3d 132 (2007).

### Deviation from Chart.

Where the original support order was \$40 per week, but the family-support chart called for \$138 per week, father’s support was properly increased to the higher amount under subsection (c) of this section even though his income had not increased, as he did not prove that the original support order’s deviation from the chart was based on his agreement with the mother not to seek visitation. *Tucker v. Tucker*, 74 Ark. App. 316, 49 S.W.3d 145 (2001).

Trial court erred in reducing appellee mother’s child support obligation to \$24 per week without considering estimates of her income for the first quarter of 2003, as required by Ark. Sup. Ct. Admin. Order No. 10; the evidence showed that appellee had from \$7,167.32 to \$8,441.32 per month in income during the first quarter of 2003 and, at that level, child support should have been set at \$250.02 weekly. *Huey v. Huey*, 90 Ark. App. 98, 204 S.W.3d 92 (2005).

### Disability.

Where parent was unemployed when her child support obligation was first set, her becoming unable to work did not represent a significant change warranting termination of support; in fact, if parent had become unemployable rather than merely unemployed, there exists the possibility she may be entitled to monetary benefits that would not previously been available to her. *Schwarz v. Moody*, 55 Ark. App. 6, 928 S.W.2d 800 (1996).

### Employment Status.

Where parent was unemployed when her child support obligation was first set, her becoming unable to work did not represent a significant change warranting termination of support; in fact, if parent had become unemployable rather than merely unemployed, there exists the possibility she may be entitled to monetary benefits that would not previously been available to her. *Schwarz v. Moody*, 55 Ark. App. 6, 928 S.W.2d 800 (1996).



**Retroactive Award.**

Where custody petition was filed in 1992, the hearing was held in 1994, and the chancellor made a finding of the father's income as of January 1, 1993, there was no abuse of discretion in the chancellor's ordering support payments retroactive to January 1993. *Heflin v. Bell*, 52 Ark. App. 201, 916 S.W.2d 769 (1996).

Where father's tax returns were unreliable due to discrepancies in his testimony, a trial court did not err by using the net-worth method to determine his obligation since such was authorized under Ark. Sup. Ct. Admin. Order No. 10, § III.c; however, the order should have been made retroactive to when the petition was filed. *Tucker v. Tucker*, 96 Ark. App. 194, 239 S.W.3d 532 (2006).

Refusal to make modification of child support retroactive to the date of the filing of the petition for modification was reversed and remanded with instructions to so as the reviewing court found that the circuit court clearly erred in finding that there was no evidence that enabled it to calculate father's income for the two-year period prior to the filing of the petition for modification. *Tucker v. Office of Child Support Enforcement*, 368 Ark. 481, 247 S.W.3d 485 (2007).

**Sufficient Change.**

Although it does not compel a determination of changed circumstances, under subsection (a) of this section a change of ten percent (now twenty percent) in the payor's income can be sufficient to support such a finding. *Roland v. Roland*, 43 Ark. App. 60, 859 S.W.2d 654 (1993).

Under a prior version of this chapter, a change in the payor's income of ten percent (10%) was sufficient to support a determination of changed circumstances and an increase in child support pursuant to the chart; now, pursuant to subsection (a) of this section, the specified change in the payor's income does not necessarily support the determination but merely constitutes a material change of circumstances sufficient to allow the petition to

the court for its review and adjustment of child support. *Heflin v. Bell*, 52 Ark. App. 201, 916 S.W.2d 769 (1996); *Moreland v. Hortman*, 72 Ark. App. 363, 39 S.W.3d 23 (2001).

Where the court had before it evidence that appellee mother had experienced negative income for two years, the amount of child support she had been previously ordered to pay was inconsistent with her current negative income, pursuant to the Family Support Chart; this constituted a material change of circumstances justifying a reduction in the mother's child support obligation. *Huey v. Huey*, 90 Ark. App. 98, 204 S.W.3d 92 (2005).

Where father's unemployment benefits expired in March 2004, his petition to reduce his child support obligation in May 2004, in which his income was shown to have decreased from \$1000 per month to \$0 per month, showed a material change in circumstances; although father had unemployment benefits for a short time, the income situation changed materially in the ensuing months. *McKinney v. McKinney*, 94 Ark. App. 100, 226 S.W.3d 37 (2006).

Father failed to show that the expenses he sought to modify were not "in addition to" and independent of his child support obligation or that there had been a sufficient change in circumstances as he failed to provide the required financial documentation to support his claims of a decreased income level; further, father also failed to object to the trial court's imputation of his income at \$25,000 per year and the related increase in his child support obligation. *Martin v. Scharbor*, 95 Ark. App. 52, 233 S.W.3d 689 (2006).

Circuit court did not abuse its discretion in leaving the husband's support obligations the same where it carefully considered the needs of the wife and the parties' daughter and the husband's decreased ability to pay. *Bishop v. Bishop*, 98 Ark. App. 111, 250 S.W.3d 570 (2007).

**Cited:** *Weir v. Phillips*, 75 Ark. App. 208, 55 S.W.3d 804 (2001).

**9-14-108. Transfer between local jurisdictions.**

(a)(1) The court where the final adjudication of child support is rendered shall retain jurisdiction of all matters following the entry of the decree.



(2) If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the court that entered the final adjudication to request that the case be transferred to another county.

(3)(A) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(B) If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

(b)(1) At the request of the person seeking to transfer the case to another judicial district, upon proper motion and affidavit, notice and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of court in the judicial district where the case is being transferred.

(2) An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate, have been notified in writing that a request has been made to transfer the case to another judicial district.

(3) Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

(c) The circuit clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

**History.** Acts 1997, No. 1296, § 13; No. 1514, § 5, former § 9-14-108, as enacted by Acts 1997, No. 1072, has been

**A.C.R.C. Notes.** Pursuant to Acts 1999, renumbered as § 9-14-110.

### **9-14-109. Automatic assignment of rights.**

(a) By accepting public assistance for or on behalf of a dependent child, which public assistance is provided by the Department of Human Services under the Transitional Employment Assistance Program, i.e., Temporary Assistance for Needy Families, the recipient thereof shall be deemed to have assigned to the appropriate division of the Department of Human Services and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration any rights to child support from any other person as the recipient may have:

(1) In his or her own behalf or on behalf of any other family member for whom the recipient is receiving such assistance; and

(2) Accrued at the time such assistance, or any portion thereof, is accepted, to the extent possible under federal law.

(b) The appropriate division of the Department of Human Services

shall give notice in writing to each applicant for such assistance. The notice shall state that acceptance of the assistance will invoke the provisions of subsection (a) of this section and will result in an automatic assignment under subsection (a) of this section.

(c) When a child is placed in the custody of the Department of Human Services, any right to support from any person on behalf of the child shall be deemed to have been assigned to the appropriate division of the Department of Human Services and the office for the period of time that the child remains in the custody of the state.

**History.** Acts 1997, No. 1296, § 14;  
2001, No. 1248, § 5.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Moore, Child Limitations (If Any) Applies?, 19 U. Ark. Support Arrearages: What Statute of Little Rock L.J. 487.

### 9-14-110. Arkansas Registry of Child Support Orders.

(a) As used in this section, “child support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief.

(b)(1)(A) Not later than October 1, 1998, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration will establish and maintain an automated registry of child support orders, to be known as the “Arkansas Registry of Child Support Orders”.

(B) The registry will contain abstracts of child support orders and other information on each child support case in the state established or modified on or after October 1, 1998.

(C) The registry will further contain abstracts of all child support orders for cases in which services are being provided by the Office of Child Support Enforcement pursuant to Title IV-D of the Social Security Act.

(2) Abstracts of child support orders and other information on each child support case will include information as required by the United States Department of Health and Human Services, as specified in federal regulations, including, but not limited to, names, social security numbers, or other uniform identification numbers, and case identification numbers that will identify individuals who owe or are owed child support or on whose behalf the establishment of support obligations is sought and the name of the county in which the case is filed.

(3)(A) Each child support case in the registry for which services are

being provided under Title IV-D of the Social Security Act will include the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, or late penalties and fees, that are due or overdue under the order, information on moneys collected and distributed on each case, the birthdate of any child for whom the order requires support, and the amount of any lien imposed with respect to the support order.

(B) Payment history information on Title IV-D child support cases maintained in the registry will be provided by the Office of Child Support Enforcement.

(c)(1) From time to time, as may be required, the Office of Child Support Enforcement will consult with the Administrative Office of the Courts to appropriately revise the statistical case data reporting system of the Administrative Office of the Courts in order to meet requirements of the registry.

(2) The Administrative Office of the Courts will advise all clerks of court or other court personnel responsible for completion of the case data reporting of any revised statistical reporting requirements.

(3) It is the specific intent of the General Assembly that the registry be established and maintained by modification to the case information reporting system currently administered through the Administrative Office of the Courts without imposing duplicate reporting requirements on the clerks of court.

(d)(1) The Office of Child Support Enforcement will have access to statistical case information compiled by the Administrative Office of the Courts for the purpose of administering the registry.

(2) The cost of development and maintenance of the registry will be the responsibility of the Office of Child Support Enforcement.

(3) The cost of collection, storing, and retrieval of data for the registry will be the responsibility of the Office of Child Support Enforcement.

**History.** Acts 1997, No. 1072, § 1; 1999, No. 1514, § 4.      renumbered as this section.

**A.C.R.C. Notes.** Pursuant to Acts 1999, No. 1514, § 5, former § 9-14-108, as enacted by Acts 1997, No. 1072, has been      **U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

## SUBCHAPTER 2 — ENFORCEMENT GENERALLY

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- 9-14-203. [Superseded.]
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- 9-14-233. Arrearages — Interest and attorney's fees — Work activities and incarceration.
- 9-14-234. Arrearages — Finality of judgment.
- 9-14-235. Arrearages — Payment after duty to support ceases.
- 9-14-236. Arrearages — Child support limited — Limitations period.
- 9-14-237. Expiration of child support obligation.
- 9-14-238. Collection of support obligations.
- 9-14-239. Suspension of license for failure to pay child support.
- 9-14-240. Expiration of income withholding.
- 9-14-241. Referrals for criminal prosecution.
- 9-14-242. Report of nonsupport payments.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 9-14-201, 9-14-202, and 9-14-204 — 9-14-236 may not apply to §§ 9-14-237 and 9-14-238 which were enacted subsequently.

**Cross References.** Alimony and child support — bond — method of payment, § 9-12-312.

For child support enforcement guidelines, see the Appendix at the end of this title.

Maintenance and attorney's fees, § 9-12-309.

Modification of allowance for alimony and maintenance, § 9-12-314.

**Effective Dates.** Acts 1985, No. 989, § 6: Aug. 1, 1985.

Acts 1987, No. 524, § 4: Aug. 1, 1987.

Acts 1989, No. 383, § 5: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the recent court interpretations of support law for minor children have led to lack of uniformity in collection and enforcement and that it is in the best interests of the citizens of this state that all persons financially able to do so should contribute to the support of their minor child. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 948, § 10: Mar. 27, 1989, except §§ 1, 2, and 5 effective Oct. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient manner for all children of this state; that new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of this act to become effective October 1, 1989."

Acts 1991, No. 301, § 6: Mar. 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children in this state; that the smooth transition from current requirements to those of the act require that the provisions become effective upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 542, § 11: Mar. 14, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that a recent court decision has led to uncertainty in the area of immunity under existing Arkansas Code provisions; that to clarify such provisions will allow those persons to avoid needless legal expenses resulting from the possible misinterpretation of the law. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 870, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that smooth transition from current requirements to those of this act require that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1095, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1991, is essential to the operation of the child support collection system in this state and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 396, § 7: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of



the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that a smooth transition from current requirements to those of this Act requires that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 468, § 9: Mar. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that currently one in four children in the United States grows up in a single parent household and that millions of these children fail to receive the financial support that they are owed; that this financial support is crucial to sustaining family life and often to averting outright poverty; that children whose parents live in different states suffer for the most since a conflict between jurisdictions can often stand as a serious impediment to the enforcement of a child support order; that this act provides for one-state control of a case and for a clear and efficient method of interstate case processing; and that this act should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 927, § 5: Apr. 7, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that it is in the best interests of the people of the State of Arkansas that the role of attorneys employed by the Department of Human Services or the Child Support Enforcement Unit or their contractors be clarified, and that a smooth transition from current requirements of law to those of this Act requires that the provisions become effective immediately upon passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1249, § 6: Apr. 20, 1993. Emergency clause provided: "The General

Assembly finds that in order to meet the expedited process requirements pursuant to 45 CFR 303.101 and to implement and transfer the Child Support Enforcement Unit from Department of Human Services to the Department of Finance and Administration, it is imperative that this act be given immediate effect so that federal funding is not jeopardized. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (1st Ex. Sess.), No. 5, § 7: Mar. 4, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that Arkansas law governing immediate income withholding does not conform with current federal requirements set forth in Title IV-D of the Social Security Act and implementing regulations; that failure to immediately remedy the law by legislative action will place Title IV-D and Aid to Families With Dependent Children funding in jeopardy. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1064, § 6: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of the people of the state of Arkansas that child support orders be enforced and that child support collected in the most expedient manner and that a smooth transition from current requirements to those of this act require that such provisions become effective immediately upon passage and approval of this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation



Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is

declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

### RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

Sullivan, The Need for a Business or Payroll Records Affidavit for Use in Child

Support Matters, 11 U. Ark. Little Rock L.J. 651.

Survey, Civil Procedure, 12 U. Ark. Little Rock L.J. 603.

### 9-14-201. Definitions.

As used in this Code:

(1)(A) "Accrued arrearage" means a delinquency that is past due and unpaid and owed under a court order or an order of an administrative process established under state law for support of any child or children.

(B) "Accrued arrearage" may include past due support that has been reduced to a judgment if the support obligation under the order has not been terminated;

(2) "Child support order" or "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living, that provides for monetary support, health care, including health insurance or cash medical support, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief;

(3) "Court or its representative" means the circuit court of this state or a similar district court of another state when the context so requires, a court official of the circuit court, or the state or local child support enforcement attorney operating pursuant to an agreement with the court in cases related to Title IV-D of the Social Security Act;

(4)(A) "Income" means any periodic form of payment due to an individual, regardless of the source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(B) The definition of "income" may be expanded by the Supreme Court from time to time in Supreme Court Administrative Order Number 10 — Child Support Guidelines;

(5) "Lump-sum payment" means any:

(A) Form of income paid to an individual at other than regular or periodic intervals; or

(B) Payment regardless of frequency that is dependent upon meeting a condition precedent, including without limitation:

- (i) The performance of a contract;
- (ii) A job performance standard or quota;
- (iii) The liquidation of unused sick or vacation pay or leave;
- (iv) The settlement of a claim; or
- (v) An award for length of service;

(6) “Net lump-sum payment” means the entire lump-sum payment less any amount required by law to be withheld;

(7) “Noncustodial parent” means a natural or adoptive parent who does not reside with his or her dependent child;

(8) “Notice” means any form of personal service authorized under Arkansas law;

(9) “Overdue support” means a delinquency pursuant to an obligation created under a court decree, order, or judgment or an order of an administrative process established under the laws of another state for the support and maintenance of a minor child;

(10) “Past due support” means the total amount of support determined under a court order established under state law, that remains unpaid; and

(11)(A) “Payor” means an employer, person, general contractor, independent contractor, subcontractor, or legal entity that has or may have in the future in its possession moneys, income, periodic earnings, or a lump-sum payment due the noncustodial parent.

(B) “Payor” shall include all agencies, boards, commissions, institutions, and other instrumentalities of the United States Government and the State of Arkansas and all cities of the first class, cities of the second class, incorporated towns, and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts.

**History.** Acts 1985, No. 989, § 6; A.S.A. 1947, § 34-1224; Acts 1987, No. 719, § 1; 1997, No. 1296, § 16; 1999, No. 1514, § 7; 2007, No. 713, § 2; 2009, No. 551, § 3.

**Amendments.** The 2007 amendment added (5) and redesignated the remaining subsections accordingly; inserted “or a lump-sum payment” in (11)(A); and made related changes.

The 2009 amendment inserted “including health insurance or cash medical support” in (2), and made a related change.

**Meaning of “this code”.** See note to § 1-2-113(b).

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

## CASE NOTES

**Income.**

The chancellor erred when he ordered the husband/father to pay child support based solely on his income as a fireman; notwithstanding that his regular work week was 56 hours, the husband/father should have been required to pay child support based on income from part-time employment for his father's construction company and the National Guard. *Office of Child Support Enforcement v. Longnecker*, 67 Ark. App. 215, 977 S.W.2d 455 (1999).

Gambling proceeds were properly included as income for purposes of calculating child support but the true expendable or disposable income could only be arrived at by crediting gambling losses against those proceeds to the extent of the winnings. *McWhorter v. McWhorter*, 346 Ark. 475, 58 S.W.3d 840 (2001).

Bonus received by father fell within the definition of income for purposes of child support. *Paschal v. Paschal*, 82 Ark. App. 455, 117 S.W.3d 650 (2003).

Under Ark. Sup. Ct. Admin. Order No. 10, the \$100,000 bonus that the father received in 2001 clearly fell within the definition of income, and the trial court properly considered the 2001 bonus in determining the father's child-support obligation for 2001; however, in setting future support, the trial judge properly did not include potential bonuses that the father might receive in the future. *Paschal v. Paschal*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 496 (June 11, 2003), substituted opinion, 82 Ark. App. 455, 117 S.W.3d 650 (2003).

**Cited:** *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

**9-14-202. Exclusivity of remedies.**

The remedies provided in this subchapter shall not be exclusive of other remedies presently existing.

**History.** Acts 1985, No. 989, § 32; A.S.A. 1947, § 34-1250.

## CASE NOTES

**In General.**

Tennessee court's order that wife was entitled to \$25,000 of husband's settlement funds did not constitute an election of remedies that precluded her use of garnishment to collect money belonging to husband; an order for child-support arrearages is a final judgment subject to garnishment or execution until the order is modified or otherwise set aside, and the

fact that an order also provides for income withholding to satisfy accrued support arrearages is irrelevant in determining whether garnishment provides a viable alternative method for collecting the arrearage. *Sears v. Burkeen*, 96 Ark. App. 13, 237 S.W.3d 521 (2006).

**Cited:** *Stewart v. Norment*, 328 Ark. 133, 941 S.W.2d 419 (1997); *Hill v. Hill*, 84 Ark. App. 132, 134 S.W.3d 6 (2003).

**9-14-203. [Superseded.]**

**A.C.R.C. Notes.** Former § 9-14-203 was renumbered and merged with § 25-10-118. That section has been deemed to be superseded by current § 25-10-118.

Current § 25-10-118 is derived from Acts 1989 (1st Ex. Sess.), No. 44, § 12, and Acts 1995, No. 1184, § 35.



**9-14-204. Hearings for enforcement of support orders.**

(a)(1) Hearings in all child support cases and paternity cases brought pursuant to Title IV-D of the Social Security Act shall be heard within a reasonable period of time following service of process in each county in the state as defined in this section.

(2) In each of the seventy-five (75) counties of this state, the circuit judge or judges of the judicial district for the county may designate at least one (1) day per month, and shall designate additional days each month when expedited process is not met in the preceding quarter, in each county to docket and hear matters concerning the establishment and enforcement of support orders and paternity. These dates shall be publicized in the court calendar for the judicial district each calendar year, clearly noting the county and time of day the court shall commence to sit on these matters.

(3)(A) In addition, in all actions in which delinquency or other support-related noncompliance has been identified, cases brought pursuant to Title IV-D of the Social Security Act shall be completed from the time of delinquency or the location of the noncustodial parent by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, whichever is later, to the time of disposition within the following time periods within each judicial district:

(i) No more than thirty (30) calendar days, if service of process is not needed; or

(ii) In cases in which service of process is required, the circuit judge or judges of a judicial district shall hear and dispose of seventy-five percent (75%) of all Title IV-D cases within forty-five (45) days after filing when service is obtained. However, when there is a need for relocation of the noncustodial parent in order to achieve service, the forty-five-day time period shall not commence until the filing of the court's last order to appear and show cause or subsequent other pleading or order necessary to proceed with service.

(B) In addition, in all Title IV-D actions:

(i) The sheriff of the county in which the case is filed shall use diligent efforts to obtain service of process on the noncustodial parent within ten (10) days from the date of a service request and, if service of process is not accomplished within ten (10) days, the sheriff shall return the service papers to the requesting party and note specifically the reasons for nonservice. The return shall be filed with the circuit clerk within eleven (11) days of the request for service whether the return is based on service or nonservice;

(ii) Pursuant to § 16-20-101, the clerk of the court shall file or docket all Title IV-D cases, pleadings, and orders on the date received, but no later than the close of business the following business day after the cases, pleadings, or orders are received in the clerk's office. Filed cases, pleadings, orders, or court documents in all Title IV-D cases shall be returned or made available to the filing party immediately thereafter.

(C)(i) All actions to establish paternity and support obligations in cases brought pursuant to Title IV-D of the Social Security Act shall be completed from the time of service to the time of disposition within the following time periods within each judicial district:

(a) Seventy-five percent (75%) in six (6) months;

(b) Ninety percent (90%) in twelve (12) months.

(ii) When calculating these rates of disposition:

(a) The percentages will be based upon a comparison of all disposed cases to the total of all filed cases for the preceding quarter within each judicial district that have been brought pursuant to Title IV-D of the Social Security Act; and

(b) In any jurisdiction in which twenty (20) or fewer Title IV-D cases have been filed during the preceding quarter, when applying the percentages set forth in subdivision (a)(3)(C)(i) of this section, the next lowest whole number will be utilized for purposes of the measurement of compliance.

(D) These calculations will be for the quarter ending April 1, 1995, and each three (3) months thereafter.

(b)(1)(A) The circuit judge or judges of a judicial district shall provide for expedited support and paternity hearings in each county of the district.

(B) The Chief Justice of the Supreme Court shall direct the redistribution of caseload assignments or appoint an additional circuit judge or judges to hear Title IV-D cases and assist the county or judicial district and to serve in accordance with this section, if necessary, to meet the time requirements for processing Title IV-D cases.

(2)(A) Upon agreement of the circuit judges and clerks in the counties selected by the Office of Child Support Enforcement, the Office of Child Support Enforcement shall designate up to ten (10) counties of various populations, geographic locations, and economic development for test purposes and to conduct demonstration projects for expedited process to determine the feasibility of implementing innovative policies, procedures, practices, and techniques, including, but not limited to, a quasijudicial process, in the establishment of paternity, child support, and enforcement of child support orders pursuant to Title IV-D of the Social Security Act.

(B) The Office of Child Support Enforcement shall notify and obtain the agreement of all affected judges and clerks in each of the designated counties of their selection thirty (30) days prior to implementation of the demonstration project.

(C) Such demonstration projects shall automatically terminate by operation of law on April 1, 2001, or may be extended upon application by the Office of Child Support Enforcement and the consent of the Governor.

(c) The compensation to be allowed a circuit judge appointed under this section shall be as prescribed by current law for appointed circuit judges.

(d)(1) The appointed circuit judge shall have the same authority and power as a circuit judge to issue any and all process in conducting hearings and other proceedings in accordance with this section.

(2) In addition, the appointed circuit judge shall have those powers as other judges under state and federal law and Title IV-D of the Social Security Act.

(e) The Chief Justice may recall from retirement a circuit judge and appoint same pursuant to this section to assist the state in meeting the required time frames noted in this section.

(f) The Office of Child Support Enforcement shall furnish to the Administrative Office of the Courts caseload information and data regarding the Title IV-D cases filed by the attorneys for the State of Arkansas.

**History.** Acts 1985, No. 989, § 19; 1986 (2nd Ex. Sess.), No. 15, § 1; A.S.A. 1947, § 34-1237; Acts 1987, No. 316, § 1; 1987 (1st Ex. Sess.), No. 33, § 2; 1991, No. 1095, § 2; 1995, No. 1064, § 1; 1997, No. 1296, § 17.

**A.C.R.C. Notes.** With respect to jurisdiction over other support proceedings, see also § 9-27-306.

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of

the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq. The Federal Child Support Enforcement Amendments of 1984, Public Law 98-378, are codified, in pertinent part, as 42 U.S.C. § 666.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

### 9-14-205. Information required in support cases.

(a) In all cases in which the support and care of any child or children are involved, it shall be the duty of the plaintiff, defendant, custodial parent or physical custodian of the child, and the noncustodial parent to keep the clerk of the circuit court informed of his or her current address when a payment of support is directed to be paid through the registry of the court or keep the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration informed of his or her current address when a payment of support is directed to be paid through the Arkansas child support clearinghouse.

(b)(1) Each party to any case in which the support and care of any child or children are involved shall file with the clerk of the circuit court and the Office of Child Support Enforcement and update, as appropriate, his or her name, social security number, residential and mailing address, telephone number, driver's license number, and the employer's name and address.



(2)(A) Information required pursuant to subdivision (b)(1) of this section shall be filed on a form provided by the Administrative Office of the Courts for that purpose.

(B) Forms filed with the clerk pursuant to subdivision (b)(1) of this section shall be:

(i) Maintained separately from the file of the case in which the support and care of any child or children are involved; and

(ii) Considered confidential and shall be open to inspection only by the following persons or entities:

(a) The Office of Child Support Enforcement;

(b) Attorneys of record for any party to the case, including, but not limited to, parties appearing pro se; and

(c) Any person or entity authorized by the circuit court in which the form is filed.

(c) In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the circuit court shall deem that state due process requirements for notice and service of process have been met with respect to the party upon delivery of written notice to the most recent residential address or employer address filed with the clerk of the circuit court pursuant to this subsection.

**History.** Acts 1985, No. 989, § 5; 1986 (2nd Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 34-1223; Acts 1997, No. 1296, § 18; 1999, No. 1514, § 8; 2005, No. 1877, § 1.

**Amendments.** The 2005 amendment deleted former (a); redesignated former (b) as present (a)(1); added (b)(2)(A); redesignated former (b)(2) as present (c); in present (a), substituted “all cases in which the support and care of any child or children are involved” for “support cases” and inserted “of the circuit court” following “clerk”; in present (b)(1), substituted “case

in which the support and care of any child or children are involved shall” for “paternity or child support proceeding is required to,” inserted “clerk of the” preceding “circuit court,” deleted “upon the entry of an order” following “Office of Child Support Enforcement” and made related changes; and, in present (c), substituted “clerk of the circuit court” for “chancery court.”

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

### 9-14-206. Office of Child Support Enforcement — Establishment — Plan — Program — Child support officers.

(a) There is established an organizational unit to be called the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration that shall administer the state plan for child support enforcement required under Title IV-D of the Social Security Act.

(b) The office is designated as the single public entity for the administration of income withholding of support payments in accordance with federal law.

(c)(1) The office is hereby designated as a law enforcement agency and may employ a child support officer in counties where the court grants at least two thousand five hundred (2,500) divorces each year to assist in the service of civil and criminal process and to enforce child support orders in this state.

(2) The officers shall be duly certified law enforcement officers pursuant to § 12-9-101 et seq. and shall have the same power to execute, serve, and return all lawful warrants including warrants of arrest issued by the State of Arkansas or any political subdivision thereof.

(d)(1)(A) Notwithstanding the provisions of subsection (c) of this section, in all counties in cases in which the sheriff has returned the service papers “non est”, the office may employ a child support officer or contract with a process server to assist in the service of civil and criminal process and to enforce child support orders in this state.

(B) A child support officer so employed shall be a duly certified law enforcement officer pursuant to § 12-9-101 et seq.

(2) Process servers contracting with the office or its agent shall be appointed by the circuit court pursuant to Rule 4 of the Arkansas Rules of Civil Procedure or Rule 6.3 of the Arkansas Rules of Criminal Procedure.

(3) A child support officer or process server shall have authority to execute, serve, and return all lawful warrants of arrest issued by the State of Arkansas or any political subdivision thereof.

(4) In any county wherein the sheriff chooses to transfer the responsibility of service of process in Title IV-D child support cases to the office, the office or its agent may employ a child support officer or contract with a process server as set forth in this subsection.

**History.** Acts 1985, No. 989, § 20; A.S.A. 1947, § 34-1238; Acts 1989, No. 808, § 1; 1989, No. 948, § 7; 1995, No. 1184, § 41; 1997, No. 1296, § 19.

**U.S. Code.** Title IV-D of the Social

Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## CASE NOTES

### Tax Refund.

Where father was ordered to pay \$325 per month for child support and \$32.50 a month for arrearages, the state went outside the bounds of the chancellor's order

when it intercepted the father's IRS tax refund and reported him as delinquent to the credit bureau. Arkansas Dep't of Human Servs. v. Brown, 35 Ark. App. 11, 811 S.W.2d 326 (1991).

## 9-14-207. Office of Child Support Enforcement — Administrator — Child support officers.

(a) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration

is authorized to enter into cooperative agreements with county judges, court clerks, and prosecuting attorneys concerning the establishment, enforcement, collection, monitoring, and distribution of support obligations.

(b) The administrator is further authorized to appoint child support officers, in counties where the court grants at least two thousand five hundred (2,500) divorces each year, as law enforcement officers in the duties and obligations as set forth in § 9-14-206(c).

(c)(1) The administrator or his or her designee is authorized to issue an administrative subpoena for any financial or other information needed to establish, modify, or enforce a child support order to any individual or organization reasonably believed to have information on the financial resources of a parent or presumed or alleged father.

(2) A court may compel compliance with an administrative subpoena, impose penalties as authorized by § 9-14-208(c), and award attorney's fees and costs to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration upon proof that an individual or organization failed to comply with the subpoena without cause.

(3) Subpoenas issued pursuant to the authority of the office shall be substantially in the following form:

"The State of Arkansas to the Sheriff of ..... County: You are commanded to subpoena ..... (name), regarding a proceeding before the Office of Child Support Enforcement to be held at ..... (address) on the ..... day of 20....., ....., and produce the following books, records, or other documents, to wit: ....., in the matter of ..... (style of proceeding), being conducted under the authority of ....."

WITNESS, my hand and seal this ..... day of 20....., .....

Administrator, Office of Child Support Enforcement"

(d)(1) Subpoenas provided for in this section shall be served in the manner as now provided by law and returned and a record made and kept by the office.

(2) The fees and mileage of officers serving the subpoenas and witnesses in answer to subpoenas shall be the same as now provided by law.

**History.** Acts 1985, No. 989, § 21; A.S.A. 1947, § 34-1239; Acts 1989, No. 808, § 2; 1997, No. 1296, § 20.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

### **9-14-208. Office of Child Support Enforcement — Powers to obtain information on noncustodial parent — Penalty — Immunity.**

(a) As used in this section:

(1) "Business" means any corporation, partnership, cable television company, association, individual, utility company that is organized privately, as a cooperative, or as a quasi-public entity, and labor or other



organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(2) "Financial entity" means any bank, trust company, savings and loan association, credit union, insurance company, or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;

(3) "Information" means, but is not necessarily limited to, the following:

(A) The full name of the noncustodial parent;

(B) The social security number of the noncustodial parent;

(C) The date of birth of the noncustodial parent;

(D) The last known mailing and residential address of the noncustodial parent;

(E) The amount of wages, salaries, earnings, or commissions earned by or paid to the noncustodial parent;

(F) The number of dependents declared by the noncustodial parent on state and federal tax information and reporting forms;

(G) The name of the company, policy numbers, and dependent coverage for any medical insurance carried by and on behalf of the noncustodial parent;

(H) The name of the company, policy numbers, and the cash values, if any, of any life insurance policies or annuity contracts that are carried by or on behalf of or owned by the noncustodial parent; and

(I) Any retirement benefits, pension plans, or stock purchase plans maintained on behalf of or owned by the noncustodial parent and the values thereof, employee contributions thereto, and the extent to which each benefit or plan is vested;

(4) "Noncustodial parent" means a natural or adoptive parent, including a putative father, who does not reside with his or her dependent child and against whom the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is enforcing or seeking to enforce a support obligation pursuant to a plan described in Title IV-D of the Social Security Act;

(5) "Office of Child Support Enforcement" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or a local child support enforcement unit contracting under § 9-14-207 to establish and enforce support obligations; and

(6) "State or local government agency" means any department, board, bureau, commission, office, or other agency of this state or any local unit of government of this state.

(b)(1) For the purpose of locating and determining resources of noncustodial parents, the Office of Child Support Enforcement may request and receive information from the Federal Parent Locator Service, from available records in other states, territories, and the District of Columbia, from the records of all state agencies, and from businesses and financial entities.

(2) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may enter into cooperative agreements with other state agencies, businesses, or financial entities to provide direct on-line access to data information terminals, computers, or other electronic information systems.

(3) State and local government agencies, businesses, and financial entities shall provide information, if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4) In addition, the Office of Child Support Enforcement, pursuant to an agreement with the Secretary of the United States Department of Health and Human Services, or his or her designee, may request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of any parent or child. This information may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c) Any business or financial entity that has received a request as provided by subsection (b) of this section from the Office of Child Support Enforcement or from a child support enforcement program administered by any other state under Title IV-D of the Social Security Act shall further cooperate with the Office of Child Support Enforcement or a requesting state in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating absent parents or in establishing or enforcing child support orders on absent parents, and shall provide the requested information, or a statement that any or all of the requested information is not known or available to the business or financial entity. This shall be done within thirty (30) days of receipt of the request or the business or financial entity shall be liable for civil penalties of up to one hundred dollars (\$100) for each day after the thirty-day period in which it fails to provide the information so requested.

(d) Any business or financial entity, or any officer, agent, or employee of such an entity, participating in good faith and providing information requested under this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Office of Child Support Enforcement or to a child support enforcement program administered by a requesting state.

(e)(1) Each financial entity, as defined herein, shall cooperate with the Office of Child Support Enforcement to develop, implement, and operate an electronic automated data match system, using automated data exchanges to the maximum extent feasible, in which each financial entity shall provide to the Office of Child Support Enforcement per calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information



for each noncustodial parent who maintains an account at the financial entity and who owes past-due child support, as identified by the Office of Child Support Enforcement by name and social security number or other taxpayer identification number.

(2) For purposes of this subsection, the term “account” means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

(3) The Office of Child Support Enforcement is authorized to pay a reasonable fee to a financial entity for conducting an automated data match, not to exceed the actual costs incurred by the financial entity.

(f) Pursuant to subsection (e) of this section, each financial entity, in response to a notice of lien or levy, shall encumber or surrender assets held by the financial entity on behalf of any noncustodial parent who is subject to a child support lien pursuant to judgment or by operation of law.

(g) In cases in which there is overdue child support and in an effort to seize assets to satisfy any current support obligation and the arrearage, the Office of Child Support Enforcement is authorized to:

(1) Intercept or seize periodic or lump-sum payments from:

(A) A state or local agency, including unemployment compensation, workers’ compensation, or other benefits; and

(B) Judgments, settlements, prizes, and lotteries;

(2) Attach and seize assets of the obligated parent held in financial institutions;

(3) Attach public and private retirement funds, including any union retirement fund and railroad retirement; and

(4) Impose liens in accordance with subsection (f) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(h)(1) Such withholdings, intercepts, and seizures as set out in subsection (g) of this section may be initiated by the Office of Child Support Enforcement without obtaining a prior order from any court but must be carried out in full compliance with published administrative procedures, including due process safeguards, promulgated by the Office of Child Support Enforcement.

(2)(A) The rules and regulations shall require written notice to each parent and noncustodial parent to whom this section applies:

(i) That the withholding, intercept, or seizure has commenced; and

(ii) Of the right to an administrative hearing and the procedures to follow if the parent or noncustodial parent desires to contest the withholding, intercept, or seizure on the grounds that the withholding, intercept, or seizure is improper due to a mistake of fact.

(B) The notice to the parent and noncustodial parent pursuant to subdivision (h)(2)(A) of this section shall include the information provided to the employer, agency, or financial entity under subsection (e) of this section.

(i) Any financial entity, or any officer, agent, or employee of such entity, participating in good faith and providing information requested



pursuant to subsection (e) of this section or encumbering or surrendering assets pursuant to subsection (f) or subsection (g) of this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information or the encumbering or surrendering the assets to the Office of Child Support Enforcement.

(j) Any information obtained under the provisions of this section shall become a business record of the Office of Child Support Enforcement, subject to the privacy safeguards set out in § 9-14-210(g)-(l).

**History.** Acts 1985, No. 989, § 25; A.S.A. 1947, § 34-1243; Acts 1991, No. 542, § 3; 1993, No. 928, § 1; 1993, No. 964, § 1; 1995, No. 1184, § 8; 1997, No. 1296, § 21; 1999, No. 1514, § 9; 2001, No. 1248, §§ 6, 7; 2009, No. 551, § 4.

**Amendments.** The 2009 amendment inserted “or from a child support enforcement program administered by any other state under Title IV-D of the Social Security Act” and “or a requesting state” in (c); inserted “or to a child support enforce-

ment program administered by a requesting state” in (d); and made a minor stylistic change.

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

Suspension of commercial driver's license for delinquent child support, § 27-23-125.

### **9-14-209. Office of Child Support Enforcement — Duty to provide information to consumer reporting agency.**

(a)(1) As used in this section, “consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative, nonprofit basis regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(2) This term also includes any person who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) Upon written request by a consumer reporting agency, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall provide information to the agency regarding an amount of overdue support owed by a noncustodial parent in a case involving the Title IV-D agency.

(c) The office shall report to a consumer reporting agency the name of any noncustodial parent who owes overdue support in a case involving the Title IV-D agency and the delinquent amount.

(d)(1) Prior to disclosure of the information to a consumer reporting agency, the office shall send the noncustodial parent a notice by regular mail to his or her last known address.

(2) The notice shall inform the noncustodial parent of the name and address of the consumer reporting agency, the amount of overdue support to be released, the procedure available for the noncustodial parent to contest the accuracy of the information, and a statement that if the noncustodial parent fails to contest the disclosure within seven (7) days of the mailing date on the notice, the information will be released.

(e) The information shall not be made available to:

(1) A consumer reporting agency that the office determines does not have sufficient capability to systematically and timely make accurate use of such information; or

(2) An entity that has not furnished evidence satisfactory to the office that the entity is a consumer reporting agency.

**History.** Acts 1985, No. 989, § 29; A.S.A. 1947, § 34-1247; Acts 1989, No. 948, § 3; 1991, No. 301, §§ 1, 2; 1995, No. 1184, § 9; 1999, No. 1514, § 11.

**A.C.R.C. Notes.** The reference to the “Title IV-D agency” in (b) apparently means the Office of Child Support Enforcement.

**U.S. Code.** The reference to “Title IV-D agency” is probably a reference to Title

IV-D of the Social Security Act, codified as 42 U.S.C. § 651 et seq.

**Cross References.** Alimony and child support — bond — method of payment, § 9-12-312.

For child support enforcement guidelines, see the Appendix at the end of this title.

Maintenance and attorney’s fees during pendency of action, § 9-12-309.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

## CASE NOTES

### Real Party in Interest.

In cases where child support rights are assigned by the custodial parent to the Office of Child Support Enforcement (OCSE), the state is the real party in interest for purposes of enforcement of the support rights and, therefore, OCSE attorneys represent the interests of the state, rather than the individual assignor

of the support rights; thus, there is no conflict of interest where OCSE first enforces one parent’s assigned child support rights against the other parent and then enforces the other parent’s assigned child support rights against the first parent. *Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

### 9-14-210. Office of Child Support Enforcement — Employment of attorneys — Real party in interest — Scope of representation.

(a) The Department of Human Services or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, or both, shall employ attorneys to assist in the establishment and enforcement of support orders in the State of Arkansas.

(b) An attorney employed by the Department of Human Services or the office, or both, or employed by a county, prosecuting attorney, or local child support enforcement unit pursuant to a cooperative agreement with the office shall undertake representation of the action instead of the prosecuting attorney in actions brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(c) An attorney employed under this subchapter, whether directly or by contract with the office, may be designated a special deputy pros-

ecutor by the prosecuting attorney of that judicial district, for the limited purposes of prosecuting in a court of competent jurisdiction actions brought under § 5-26-401 or § 5-54-102, in those cases proceeding under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq. However, nothing in this section shall be construed to entitle such attorneys to those rights, benefits, or privileges that accrue to a prosecuting attorney under any other provision of state law, except as set forth below:

(1)(A) As a special deputy prosecutor, the attorney shall have the power to issue subpoenas in all matters being investigated by the office under § 5-26-401 or § 5-54-102 and may administer oaths for taking the testimony of witnesses subpoenaed before him or her.

(B) Such oaths shall have the same effect as if administered by the foreman of a grand jury.

(C) The subpoena shall be substantially in the form set forth in § 16-43-212;

(2)(A) Appointment as a special deputy prosecutor shall not entitle the attorney to receive any additional fees or salary from the state for services provided pursuant to the appointment.

(B) Expenses of the special deputy prosecutor and any fees and costs incurred thereby in the prosecution of cases under § 5-26-401 or § 5-54-102 shall be the responsibility of the office under the Title IV-D program;

(3) A special deputy prosecutor appointed and functioning as authorized under this section shall be entitled to the same immunity granted by law to the prosecuting attorney;

(4) The prosecuting attorney may revoke the appointment of a special deputy prosecutor at any time.

(d) The State of Arkansas is the real party in interest for purposes of establishing paternity and securing repayment of benefits paid and assigned past due support, future support, and costs in actions brought to establish, modify, or enforce an order of support in any of the following circumstances:

(1) Whenever public assistance under the transitional employment assistance program, i.e., temporary assistance for needy families, or § 20-77-109 or § 20-77-307 is provided to a dependent child or when child support services continue to be provided under 45 C.F.R. 302.33 as it existed on January 1, 2001;

(2) Whenever a contract and assignment for child support services have been entered into for the establishment or enforcement of a child support obligation for which an automatic assignment under § 9-14-109 is not in effect;

(3) Whenever duties are imposed on the state in Title IV-D cases pursuant to the Uniform Interstate Family Support Act, § 9-17-101 et seq.; or

(4) When a child is placed in the custody of the Department of Human Services and rights have been assigned under § 9-14-109.

(e)(1) In any action brought to establish paternity, to secure repayment of government benefits paid or assigned child support arrearages,



to secure current and future support of children, or to establish, enforce, or modify a child support obligation, the Department of Human Services or the office, or both, or their contractors, may employ attorneys.

(2) An attorney so employed shall represent the interests of the Department of Human Services or the office and does not represent the assignor of an interest set out in subsection (d) of this section.

(3) Representation by the employed attorney shall not be construed as creating an attorney-client relationship between the attorney and the assignor of an interest set forth in subsection (d) of this section, or with any party or witness to the action, other than the Department of Human Services or the office, regardless of the name in which the action is brought.

(f)(1) In any action brought by the Department of Human Services or the office, or both, or their contractors, to establish paternity, to secure repayment of government benefits paid or assigned child support arrearages, to secure current and future support of children, or to establish, enforce, or modify a child support obligation, if another party pleads a claim relating to child custody or visitation, property division, divorce, or other claims not directly related to support, the office shall advise the assignee, as set forth in subsection (d) of this section, of the need for separate legal counsel.

(2) However, for the benefit of the court clerk, in any action brought by the Department of Human Services or the office, or both, or their contractors, pursuant to subsection (d) of this section, the name of the physical custodian shall be set out in the body of any petition filed and order entered in the matter.

(g) It shall be unlawful for any person to use or disclose information concerning applicants for, or recipients of, child support enforcement services provided by the office under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., except for purposes in furtherance of child support activities, including the following:

(1) Administration of the state plan for child support enforcement required under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., or administration of the Title IV-D program;

(2) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program listed in subdivision (g)(1) of this section;

(3) Administration of any federal program that provides assistance, in cash or in kind, or services directly to individuals based on need;

(4) A report to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement service when circumstances indicate that the child's health or welfare is threatened; and

(5) When authorized in writing by the custodial or noncustodial parent, child support payment records for use by attorneys and abstractors to facilitate the release or satisfaction of child support liens on real property.

(h) The office may release information on the whereabouts of a party under the following conditions:

(1) The party requesting the information is the noncustodial parent or the physical custodian who submits the request by affidavit that clearly states the reason the information is requested, and that sets out the unsuccessful attempts to acquire the information from other sources;

(2) The party requesting the information shall submit the affidavit requesting the release of information to the office by first class mail;

(3) Within seven (7) days of receiving the request, the office shall notify the party whose whereabouts are subject to disclosure that a request for location information has been made and that the requested information will be provided within twenty (20) days of the date of the notice unless the office receives a copy of a court order that enjoins the disclosure or otherwise restricts the requesting party's rights to contact or visit the party or the children, or the party requests an administrative hearing to contest the disclosure.

(i)(1) Whenever an administrative hearing is requested, the office shall not disclose the whereabouts of a party until the administrative hearing is held or completed.

(2) If any reasonable evidence of domestic violence or child abuse is presented at the administrative hearing or by affidavit and the disclosure of the last known address or any identifying information could be harmful to a party or the child, the office shall not release the information.

(j) It shall be unlawful to disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient of Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., child support enforcement services.

(k) A release of information on the whereabouts of a party made in compliance with § 9-14-205 is a permissible release of information in connection with the administration of the Title IV-D program.

(l) A release of payment information made in compliance with § 9-14-807 is a permissible release of information in connection with the administration of the Title IV-D program.

(m) A violation of subsection (g), subsection (h), subsection (i), subsection (j), subsection (k), or subsection (l) of this section shall constitute a Class B misdemeanor.

**History.** Acts 1985, No. 989, § 26; A.S.A. 1947, § 34-1244; Acts 1993, No. 468, § 2; 1993, No. 927, § 1; 1995, No. 1181, § 1; 1995, No. 1184, §§ 10, 27; 1997, No. 1296, § 22; 2001, No. 1248, §§ 8-10; 2003, No. 1020, §§ 2-4; 2003, No. 1176, § 1.

**A.C.R.C. Notes.** As originally amended by Acts 1993, No. 927, § 1, this section provided, in part: "The provisions of this section shall apply retrospectively to all

cases pending before a court of competent jurisdiction at the time of its enactment."

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq. Title IV is codified as 42 U.S.C. § 601 et seq. Titles I, X, XIV, XVI, XIX, and XX are codified as 42 U.S.C. §§ 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq., 1396 et seq., and 1397 et seq., respectively.

**Cross References.** Administrative

sanctions — Transitional employment assistance, § 20-76-410.

For child support enforcement guidelines, see the Appendix at the end of this title.

Medicaid assistance for children — Effect on child support, § 20-77-109.

Nonsupport, § 5-26-401.

The Uniform Interstate Family Support Act, § 9-17-101 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Attorneys, 16 U. Ark. Little Rock L.J. 61.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2003 Arkansas General Assembly, Family Law, Child Support Payment Records, 26 U. Ark. Little Rock L. Rev. 414.

## CASE NOTES

### ANALYSIS

In General.

Real Party in Interest.

Service of Process.

### In General.

When a decree was entered in Germany as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of the husband's obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

### Real Party in Interest.

Subdivision (d)(2) of this section does not require that public funds be expended on behalf of the child before the Office of Child Support Enforcement is deemed a real party in interest. *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

For purposes of determining the real party in interest in a situation where the custodial parent has assigned his or her child support rights to the Office of Child Support Enforcement, it is immaterial whether the custodial parent is receiving public assistance on behalf of the child.

*Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

In cases where child support rights are assigned by the custodial parent to the Office of Child Support Enforcement (OCSE), the state is the real party in interest for purposes of enforcement of the support rights and, therefore, OCSE attorneys represent the interests of the state, rather than the individual assignor of the support rights; thus, there is no conflict of interest where OCSE first enforces one parent's assigned child support rights against the other parent and then enforces the other parent's assigned child support rights against the first parent. *Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

### Service of Process.

Where mother assigned her child support rights to the Child Support Enforcement Unit, and the state filed a petition pursuant to this section, then, under subdivision (e)(2) of this section the attorney representing the state did not represent the mother, and under ARCP 5(b), service on the attorney was not service on the mother. *Vanzant v. Purvis*, 54 Ark. App. 384, 927 S.W.2d 339 (1996).

## 9-14-211. Assigned support rights generally.

(a) Support rights assigned to the Department of Human Services under § 9-14-109 shall constitute an obligation owed to the State of Arkansas by the person responsible for providing the support, and the obligation shall be collectible under all legal processes.

(b) The amount of obligation owed to the state shall be the amount specified in a court order that covers the assigned rights or, when no



court order exists, the amount of obligation owed to the state shall be the amount determined by a court based upon the noncustodial parent's income or ability to pay during the period of assignment as applied to the Arkansas child support guidelines and family support chart.

**History.** Acts 1985, No. 989, § 22; Support Enforcement by recipient of medical assistance, § 20-77-109.  
A.S.A. 1947, § 34-1240; Acts 1991, No. 369, § 1; 1997, No. 1296, § 23.

**Cross References.** Assignment of right to child support to Office of Child Support Enforcement. For child support enforcement guidelines, see the Appendix at the end of this title.

### **9-14-212. Assigned support rights — Non-Temporary Assistance to Needy Families application fee.**

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may charge a nonrefundable application fee of up to twenty-five dollars (\$25.00) to any person who contracts with the office for any services under Title IV-D of the Social Security Act for whom an assignment under § 9-14-109 is not in effect.

(b) The fee shall be known as a non-Temporary Assistance to Needy Families application fee and shall be a flat fee in an amount to be determined by the manager that shall be paid by the applicant at the time the application for assistance is submitted.

(c)(1) Non-Temporary Assistance to Needy Families services shall be provided to an applicant on a cost recovery/fee for services basis as provided under Title IV-D program requirements.

(2)(A) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall establish and publish a schedule of such fees that shall be administratively incorporated into child support enforcement policy.

(B) Copies of the fee schedule shall be provided to all applicants for child support services.

(d) Any fee or cost for services generated because of either a breach by the noncustodial parent of an agreement or of an order of the court shall be incorporated into the request for relief and reduced to a judgment in favor of and payable to the office.

**History.** Acts 1985, No. 989, § 23; A.S.A. 1947, § 34-1241; Acts 1993, No. 1242, § 4; 1995, No. 1184, § 11; 1997, No. 1296, § 24; 1999, No. 1514, § 10.

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** Administrative sanctions — Transitional employment assistance, § 20-76-410.

For child support enforcement guidelines, see the Appendix at the end of this title.

**9-14-213. Assigned support rights — Notice — Termination of assignment.**

(a)(1) When a court has ordered support payments to a person who has made an assignment of support rights under § 9-14-109 or who has executed a contract with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for non-Temporary Assistance to Needy Families assistance, the office shall notify the clerk of the court.

(2) Upon such notice, the clerk shall indicate in the registry of the court that the support is being collected under Title IV-D of the Social Security Act, and the clerk shall redirect all payments received to the office at the Arkansas child support clearinghouse.

(3) Notification to the clerk by the office shall be sufficient to authorize the clerk to redirect payments to the Arkansas child support clearinghouse. The court need not hold a hearing on the matter, and child support shall be paid through the Arkansas child support clearinghouse pursuant to § 9-14-801 et seq.

(b) Lump-sum payments toward arrearages received by the clerk subsequent to termination of the assignment that were collected by the office through debt setoff or legal process shall be redirected to the Arkansas child support clearinghouse.

**History.** Acts 1985, No. 989, § 24; A.S.A. 1947, § 34-1242; Acts 1997, No. 1296, § 25.

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

Grants of assistance, § 20-76-401 et seq.

**9-14-214. Assigned support rights — Award of fee in action.**

(a) In any action brought on behalf of a person to whom a support obligation is owed under an assignment pursuant to § 9-14-109 or pursuant to a contract for services under Title IV-D of the Social Security Act, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall be awarded a fee in an amount equal to not less than three percent (3%) and not more than six percent (6%) of the overdue support.

(b) For purposes of this section, “overdue support” means a delinquency pursuant to an obligation created under a court order or an order of an administrative process established under state law for the support and maintenance of a minor child.

**History.** Acts 1985, No. 989, § 27; A.S.A. 1947, § 34-1245; Acts 1993, No. 1242, § 13; 1997, No. 1296, § 26.

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** Administrative sanctions — Transitional employment assistance, § 20-76-410.

For child support enforcement guidelines, see the Appendix at the end of this title.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey —  
Family Law, 10 U. Ark. Little Rock L.J.  
577.

**9-14-215. Fees in actions under Uniform Interstate Family Support Act.**

(a)(1) There shall be no filing fee, service fee, or other costs collected from the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or any attorney acting on its behalf for actions brought under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(2) The court may direct such fees and costs to be paid by the noncustodial parent to the clerk of the court and the sheriff upon adjudication of the case.

(b)(1) The clerk and the sheriff may collect fees in all other cases from the office by submitting monthly or quarterly statements for their services.

(2) Each statement shall clearly note the full name of the noncustodial parent thereon.

(3) No clerk or sheriff may refuse service to the office or its attorney for its failure to pay the fees in advance.

(c)(1) A circuit clerk may collect from the noncustodial parent a fee of ten dollars (\$10.00) for completion of income withholding forms for a custodial parent pursuant to this subchapter.

(2) A notice of this fee shall be sent to the noncustodial parent along with the notice pursuant to § 9-14-221.

(3) After thirty (30) days, upon nonpayment of the fee by the noncustodial parent, the clerk may notify the payor who shall withhold the fee and remit the fee to the clerk.

**History.** Acts 1985, No. 989, § 28;  
A.S.A. 1947, § 34-1246; Acts 1991, No.  
883, § 1; 1993, No. 468, § 3; 1995, No.  
1184, § 12.

**Cross References.** For child support  
enforcement guidelines, see the Appendix  
at the end of this title.

**9-14-216. Income withholding — Establishment and maintenance of system.**

(a)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall establish and maintain a system to promptly implement income withholding for support orders issued in other states.

(2) The office shall also seek assistance from other states in implementing income withholding in other states for support orders issued in this state.

(b) The other state shall forward to the office three (3) certified copies of the support order issued by its court or administrative forum and a notice that contains the noncustodial parent's name, social security



number, and current address, the name and address of the payor to the noncustodial parent, the amount to be withheld, and the name and address where payments are to be mailed by the office.

(c) Upon receipt of the notice and certified copies of the order, the office shall establish the case within its system and follow the procedures enumerated in §§ 9-14-221 — 9-14-223 and 9-14-229.

(d) Payors notified of income withholding orders arising from other states shall be bound by and under the same requirements as though the order were issued by a court of this state under this subchapter.

(e) The office shall forward all payments received under this subchapter to the address provided by the other state.

(f) The office shall notify the state where the support order was entered when the noncustodial parent terminates employment within this state and shall provide the new address and new employer to the state, if known.

**History.** Acts 1985, No. 989, § 30; A.S.A. 1947, § 34-1248; Acts 1989, No. 948, § 4.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

### **9-14-217. Income withholding — Supersession of § 9-14-102.**

The income withholding provisions of this subchapter shall supersede the provisions of § 9-14-102 when applicable.

**History.** Acts 1985, No. 989, § 31; A.S.A. 1947, § 34-1249.

enforcement guidelines, see the Appendix at the end of this title.

**Cross References.** For child support

### **9-14-218. Income withholding — Time of taking effect generally — Forms.**

(a)(1)(A) In all decrees or orders that provide for the payment of money for the support and care of any children, the court shall include a provision directing a payor to deduct from:

(i) Money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to meet the periodic child support payments imposed by the court plus an additional amount of not less than twenty percent (20%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order; and

(ii) Any lump-sum payment as defined in § 9-14-201, the full amount of past due support owed by the noncustodial parent not to exceed fifty percent (50%) of the net lump-sum payment.

(B) The use of income withholding does not constitute an election of remedies and does not preclude the use of other enforcement remedies.

(b) Income withholding shall apply to current and subsequent periods of employment, if used in employment, or remuneration, once activated.

(c)(1) Any forms necessary to provide notice, affidavits, or any other matter that is required by this subchapter to enforce the payment of child support shall be devised by the State Commission on Child Support [abolished] with advice from the Administrative Office of the Courts.

(2) Upon the approval of the forms by the Chief Justice of the Supreme Court, the forms shall be used on a statewide basis in all cases requiring an order or notice of income withholding for child support.

(3) Any necessary changes in the forms shall be the responsibility of the Supreme Court.

(4) Distribution of the forms shall be the responsibility of the office.

(d) All judgments for past due support shall include, in the same paragraph denoting the judgment amount, a statement that the amount is subject to reduction through income withholding to put third parties on notice that the amount currently owed may differ from that reflected in the judgment.

(e) In cases brought pursuant to Title IV-D of the Social Security Act, with support orders effective prior to October 1, 1989, income withholding shall take effect immediately in any child support case at the request or upon the consent of the noncustodial parent or on the date the court grants an approved request of the custodial parent brought in accordance with procedures and standards as established by the Title IV-D agency.

(f) In those cases in which a support order has been issued or modified after August 2, 1985, without the inclusion of an income withholding provision, income withholding may be initiated in accord with procedures set forth in § 9-14-221 whenever child support arrearages owed by the noncustodial parent equal the total amount of court-ordered support payable for thirty (30) days.

**History.** Acts 1985, No. 989, § 7; A.S.A. 1947, § 34-1225; Acts 1987, No. 719, § 2; 1989, No. 948, § 5; 1991, No. 1095, §§ 3, 4; 1993, No. 396, § 1; 1994 (1st Ex. Sess.), No. 5, § 1; 1995, No. 1184, § 26; 1997, No. 1296, § 27; 1999, No. 1514, § 12; 2003, No. 1020, § 5; 2007, No. 713, § 3.

**A.C.R.C. Notes.** The reference to the "Title IV-D agency" in (e) apparently means the Office of Child Support Enforcement.

**Amendments.** The 2007 amendment added the (a)(1)(A)(i) designation; added (a)(1)(A)(ii); and made related changes.

**U.S. Code.** Title IV-D, referred to in this section, refers to Title IV-D of the Social Security Act, which is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**Ark. L. Notes.** Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

Laurence, Recent Developments in the Arkansas Law of Garnishment: A Compendium of the Pertinent Cases and Statutes, 1992 Ark. L. Notes 39.

Laurence, Recent Developments in the Arkansas Law of Garnishment: Does a Corporate Garnishee Need a Lawyer to Answer the writ?, 1997 Ark. L. Notes 95.

**U. Ark. Little Rock L.J.** Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

**CASE NOTES****Other Remedies Permitted.**

The fact that a support order provides for income withholding to satisfy accrued support arrearages is irrelevant in determining whether garnishment provides a viable alternative method for collection. *Stewart v. Norment*, 328 Ark. 133, 941 S.W.2d 419 (1997).

Tennessee chancery court order contained no language to suggest that, by accepting \$25,000 of husband's Wal-Mart settlement proceeds, wife released the

balance of the child support arrearage judgment or waived her right to collect; while she could have agreed to receive only \$25,000 from the settlement in full satisfaction of her judgment, there was no language in the order that she did so, and nothing in the order precluded her from exercising whatever legal remedies were available to judgment creditors in general for the collection of judgments. *Sears v. Burkeen*, 96 Ark. App. 13, 237 S.W.3d 521 (2006).

**9-14-219. Income withholding — Priority of order.**

Orders of income withholding for support shall have priority over all other legal processes under state law against the money, income, or periodic earnings of the noncustodial parent.

**History.** Acts 1985, No. 989, § 11; enforcement guidelines, see the Appendix A.S.A. 1947, § 34-1229. at the end of this title.

**Cross References.** For child support

**9-14-220. Income withholding — Persons subject to order — Ground to contest order.**

(a) All persons under court order to pay support on August 1, 1985, who become delinquent in an amount equal to the total court-ordered support payable for thirty (30) days shall be subject to the income withholding provisions of this subchapter. An order of income withholding shall become effective when the requirements set forth in § 9-14-221 have been satisfied.

(b) The only ground to contest an order of income withholding effective under § 9-14-221 shall be mistake of fact.

**History.** Acts 1985, No. 989, § 14; enforcement guidelines, see the Appendix A.S.A. 1947, § 34-1232. at the end of this title.

**Cross References.** For child support

**9-14-221. Income withholding — When orders take effect — Notice — Costs.**

(a) Orders of income withholding that were not effective immediately by order of the court, upon the consent of the noncustodial parent, or at the request of the custodial parent, shall become effective when payment arrearages owed by the noncustodial parent equal the total court-ordered support payable for thirty (30) days.

(b)(1) Prior to notification to the payor, for orders to be effective under this section, the noncustodial parent shall be sent a notice by any form of mail addressed to the parent at his or her last known address as contained in the records of the court clerk.



(2) Actual costs of mailing the notice may be collected by the clerk from the custodial parent.

(3) The notice shall contain the following information:

(A) The amount to be withheld;

(B) The amount of arrearages alleged to have accrued under the support order and that an additional amount of not less than twenty percent (20%) of the support ordered will be withheld to liquidate the arrearages or such amount as set forth by an order if applicable;

(C) That the income withholding applies to current and subsequent periods of employment, if used in employment, or remuneration;

(D) The procedure available to contest the withholding on the ground that the withholding is not proper because of mistake of fact;

(E) That failure to contest the withholding within ten (10) days of the receipt or refusal of the notice will result in the payor's being notified to begin the withholding;

(F) That if the noncustodial parent contests the withholding, he or she will be afforded an opportunity to present his or her case to the court or its representative in that jurisdiction within thirty (30) days of receipt of the notice of contest; and

(G) That state law prohibits employers from retaliating against a noncustodial parent under an income withholding order and that the court or its representative should be contacted if the noncustodial parent has been retaliated against by his or her employer as a result of the income withholding order.

(c)(1) Should the noncustodial parent contest the withholding because of mistake of fact, then after providing the noncustodial parent an opportunity to present his or her case the court or its representative shall determine whether the withholding shall occur and shall notify the noncustodial parent of the determination and, if appropriate, the time period in which withholding will commence.

(2) The notice shall include the information to be provided to the payor as required in § 9-14-222.

**History.** Acts 1985, No. 989, § 15; A.S.A. 1947, § 34-1233; Acts 1987, (1st Ex. Sess.), No. 33, § 1; 1991, No. 1095, § 5; 1993, No. 396, § 2; 2003, No. 1020, § 6.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**Ark. L. Notes.** Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

**U. Ark. Little Rock L.J.** Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

**9-14-222. Income withholding — Notice to payor — Costs.**

(a) A payor shall be notified of an order of income withholding by a notice as set forth in this section.

(b)(1) The order and notice of income withholding may be served on the payor by first class mail.

(2) If the payor does not remit the wage withholding in accordance with subdivision (d)(11) of this section, a second notice shall be sent pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

(c) Costs for service of this notice may be collected from the custodial parent.

(d) The notice shall include the following information:

(1) The noncustodial parent's name and social security number;

(2) The amount to be withheld and that the total amount actually withheld cannot be in excess of the maximum amount allowed under section 303(b) of the Consumer Credit Protection Act if the payor is the employer of the noncustodial parent;

(3) To whom and in what manner the withholding is to be paid and that the payments are to occur at the same time the noncustodial parent is paid;

(4) That the payor may deduct a fee not to exceed two dollars and fifty cents (\$2.50) in addition to the court-ordered amount for the administrative cost incurred in each withholding;

(5) That withholding is binding on the payor until further notice by the court or its representative;

(6) That the payor, if an employer, is subject to a fine of up to fifty dollars (\$50.00) a day for discharging a noncustodial parent from employment or for refusing to employ, or for taking disciplinary action against, any noncustodial parent because of the withholding;

(7) That the payor is liable for any amount up to the accumulated amount that should have been withheld should he or she fail to withhold income in accordance with the notice;

(8) That the withholding is for child support and, under § 9-14-219, takes priority over any other legal process against the same income;

(9) That the payor may combine and remit from several noncustodial parents one (1) withholding payment so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify the portion of the payment that is attributable to each of the noncustodial parents;

(10) That if the payor is already under an income withholding order under this subchapter, then the payor must make disbursements under each income withholding notice or order under the procedures for the payor provided under § 9-14-228;

(11) That the payor must implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed;

(12) That the payor must notify the court or its representative immediately when the noncustodial parent terminates employment or

takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known; and

(13) The procedure available in that jurisdiction to the payor to object to the withholding on the ground of mistake of fact and that the objection must be made in writing and to whom it must be sent within seven (7) days following the date the notice was received or refused or the sanctions set forth in subdivisions (d)(6) and (7) of this section shall apply.

**History.** Acts 1985, No. 989, § 16; A.S.A. 1947, § 34-1234; Acts 1994 (1st Ex. Sess.), No. 5, § 3; 1999, No. 1514, § 13.

**U.S. Code.** Section 303(b) of the Consumer Credit Protection Act, referred to in

this section, is codified as 15 U.S.C. § 1673(b).

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

### CASE NOTES

#### **Jurisdiction.**

The circuit court was without jurisdiction to review a collateral administrative order defining the manner of paying child support issued by the chancery court.

*Partlow v. Darling Store Fixtures*, 314 Ark. 87, 858 S.W.2d 695 (1993).

**Cited:** *Monroe Auto Equip. Co. v. Partlow*, 311 Ark. 633, 846 S.W.2d 637 (1993).

### **9-14-223. Income withholding — Objection of payor.**

Upon receipt of an objection from a payor under an order of income withholding, the court or its representative shall expeditiously determine whether the payor shall be relieved under the order and shall so inform the payor within ten (10) days of receipt of the objection by a notice of its determination sent to the payor by regular mail.

**History.** Acts 1985, No. 989, § 17; A.S.A. 1947, § 34-1235.

enforcement guidelines, see the Appendix at the end of this title.

**Cross References.** For child support

### CASE NOTES

**Cited:** *Branch v. Carter*, 326 Ark. 748, 933 S.W.2d 806 (1996).

### **9-14-224. Income withholding — Duties of payor.**

(a) A payor who has been notified of an order of income withholding shall be bound by the order until further notice by the court or its representative.

(b)(1) A payor who is an employer that withholds support payments from more than one (1) employee shall have the option to periodically remit to the clerk funds withheld from all such employees in a single check rather than remitting the funds withheld from each employee separately.



(2) If the payor elects to remit all such funds in a single check, each such remittance shall be accompanied by a list showing the portion of the funds withheld from each employee.

(c) A payor shall notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known.

**History.** Acts 1985, No. 989, § 8; A.S.A. 1947, § 34-1226; Acts 1993, No. 1152, § 2. enforcement guidelines, see the Appendix at the end of this title.

**Cross References.** For child support

### **9-14-225. Income withholding — Liability of payor — Distribution of moneys.**

(a) A payor who has been notified of an order of income withholding shall be liable for any amount up to the accumulated amount that should have been withheld should he or she fail or refuse to withhold the income in accordance with the notice.

(b) Once money has been withheld, except as provided in subsection (c) of this section, it shall be considered the property of the custodial parent. The custodial parent to whom the money is owed may seek any and all available redress against any employer who fails to transmit money pursuant to an order of income withholding.

(c) Moneys withheld in cases brought under Title IV-D of the Social Security Act shall become the property of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to be distributed in accordance with child support policy.

**History.** Acts 1985, No. 989, § 9; A.S.A. 1947, § 34-1227; Acts 1989, No. 210, § 1; 1995, No. 1184, § 13.

**U.S. Code.** As to Title IV-D of the Social Security Act, referred to in this section, see note to § 9-14-218.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

### **9-14-226. Income withholding — Prohibition of disciplinary action against employee — Penalty.**

(a) A payor who is an employer is prohibited from discharging, refusing to employ, or taking other disciplinary action against a noncustodial parent under an income withholding order.

(b) Any employer violating this subchapter shall be subject to the contempt powers of the court issuing the order and may be fined up to fifty dollars (\$50.00) per day.

(c) The noncustodial parent shall have the burden to prove that income withholding was the sole reason for the employer's action.

**History.** Acts 1985, No. 989, § 10; enforcement guidelines, see the Appendix A.S.A. 1947, § 34-1228. at the end of this title.

**Cross References.** For child support

### **9-14-227. Income withholding — Administrative costs — Applicability to unemployment compensation and workers' compensation.**

(a) A payor may withhold up to two dollars and fifty cents (\$2.50) per pay period in addition to the court-ordered income withholding amount for the administrative cost incurred in each withholding.

(b) The income withholding provisions of this subchapter shall apply to unemployment compensation benefits to the extent allowed by §§ 11-10-109 and 11-10-110.

(c) The income withholding provisions of this subchapter shall apply to workers' compensation benefits to the extent allowed by § 11-9-110.

**History.** Acts 1985, No. 989, § 12; at the end of this title.  
A.S.A. 1947, § 34-1230; Acts 1987, No. Department of Workforce Services Law,  
524, § 1; 1995, No. 1184, § 25. § 11-10-101 et seq.

**Cross References.** For child support Workers' compensation, § 11-9-101 et  
enforcement guidelines, see the Appendix seq.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey —  
Family Law, 10 U. Ark. Little Rock L.J.  
577.

### **9-14-228. Income withholding — Procedures for payor.**

(a)(1) A payor shall withhold the amount indicated in the notice from money, income, or periodic earnings due the noncustodial parent and remit the amount in the manner set forth in the notice.

(2) Payments are to be made at the same time the noncustodial parent is paid. The payor shall identify the date of income withholding on each payment.

(3) The amount withheld, when added to the administrative fee charged by the payor, shall not exceed the maximum limit under section 303(b) of the Consumer Credit Protection Act if the payor is an employer of the noncustodial parent.

(b) A payor may combine and remit one (1) single withholding payment from several noncustodial parents so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify that portion of the payment that is attributable to each of the noncustodial parents and the date of income withholding for each payment.

(c)(1) If there is more than one (1) notice or order for income withholding for current child support against a noncustodial parent and the total amount requested exceeds the limits imposed under the Consumer Credit Protection Act, the payor shall make pro rata disbursements, "pro rata" being the proportionate amount each notice or

order bears to the total amount due for current support under all notices and orders.

(2) If the total to be withheld for current and past due support exceeds the Consumer Credit Protection Act's limits and if all notices and orders for current support have been satisfied, the payor shall make pro rata disbursements of the remaining amount available for disbursement for each notice or order involving past due support, "pro rata" being the proportionate amount each notice or order for past due support bears to the total amount due for past due support under all notices and orders.

(3)(A) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall notify employers of this change from first come, first served to pro rata in the treatment of multiple income withholding notices and orders for child support.

(B) Further, the office shall take steps through public information activities to inform the public of this change.

(C) As far as practicable, the office shall consolidate multiple income withholding notices and orders involving the same payor and noncustodial parent through issuance of a single notice to the payor under the notification procedures set out under § 9-14-222, delineating the amounts of pro rata disbursements to be made by the payor in Title IV-D cases.

(d) The payor shall implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed.

**History.** Acts 1985, No. 989, § 13; A.S.A. 1947, § 34-1231; Acts 1989, No. 948, § 6; 1994 (1st Ex. Sess.), No. 5, § 2.

**U.S. Code.** Section 303(b) of the Consumer Credit Protection Act, referred to in this section, is codified as 15 U.S.C. § 1673(b).

The reference to Title IV-D in subdivision (c)(3)(C) is a reference to Title IV-D of the Social Security Act, codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## CASE NOTES

### ANALYSIS

Jurisdiction.  
Prohibition.

### Jurisdiction.

The circuit court was without jurisdiction to review a collateral administrative order defining the manner of paying child support issued by the chancery court. *Partlow v. Darling Store Fixtures*, 314 Ark. 87, 858 S.W.2d 695 (1993).

### Prohibition.

Writ of prohibition was denied where petitioners did not show that the issuance of an administrative order, whatever might be said of its propriety or validity, affecting the collection of child support, was an usurpation of jurisdiction by the respondents, or that the issues common to the proceedings were more appropriate to prohibition than to appeal. *Monroe Auto Equip. Co. v. Partlow*, 311 Ark. 633, 846 S.W.2d 637 (1993).



**9-14-229. Income withholding — Termination of order — Notice to payor.**

(a) The circuit court may terminate an income withholding order upon proof that the court or its representative has been unable to deliver payments to the custodial parent for a period of six (6) months.

(b) An income withholding order shall terminate when there is no further support obligation owed.

(c) The circuit court or its representative shall notify the payor to cease withholding and shall refund support payments to the noncustodial parent in those cases in which no state debt as defined in § 9-14-211 remains unpaid.

**History.** Acts 1985, No. 989, § 18; enforcement guidelines, see the Appendix A.S.A. 1947, § 34-1236. at the end of this title.

**Cross References.** For child support

**9-14-230. Decree as lien on real property.**

(a)(1)(A) Any decree, judgment, or order that contains a provision for payment of money for the support and care of any child or children through the registry of the court or through the Arkansas child support clearinghouse shall become a lien upon all real property, not otherwise exempt by the Arkansas Constitution, owned by the noncustodial parent or that the noncustodial parent may afterwards, or before the lien expires, acquire.

(B) Such lien originating in another state shall be accorded full faith and credit as if such lien originated in the State of Arkansas.

(2) The decree, judgment, or order shall become a lien as each support installment becomes due and remains unpaid.

(3) The decree, judgment, or order shall not become a lien for any sum or sums prior to the date they severally become due or payable.

(b)(1) The decree, judgment, or order shall be recorded in the judgment records of the county of the circuit court issuing the order in the same manner as other judgments as provided by law.

(2) Upon receipt of a certified copy of the decree, order, or judgment, the circuit clerk of any other county within the State of Arkansas shall record the certified copy, which shall become a lien against real estate located in that county owned or thereafter acquired by the noncustodial parent.

(3) When recording the decree, judgment, or order in a county other than the county of the circuit court issuing the order, a certified copy of the support payment record from the registry of the court noting all payments made since August 1, 1985, or from the date of the entry of the support order to the present, shall accompany the decree, judgment, or order.

(4) If a certified copy of the payment record does not accompany the decree, order, or judgment, the lien shall be for only the amount of payments that become due and remain unpaid subsequent to the date

of recording in the county other than the county of the circuit court issuing the order.

(c)(1) The lien against real property created in this section shall be prioritized by the date it is created as set forth in subsection (b) of this section as would any other encumbrance under state law.

(2) It is the intent of the General Assembly that the lien created under this section does not relate back in time to the filing date of the decree, judgment, or order from which it arose but shall become viable only at such time as a support payment becomes due and remains unpaid.

(3) A lien created under this section may be satisfied through foreclosure and execution under the same procedure as otherwise provided by state law.

(d)(1)(A) A certificate of the noncustodial parent sworn under penalty of perjury that all amounts and installments owed have been fully paid prior to the date of the certificate, when acknowledged before a notary public and accompanied by a certified copy of the support record since August 1, 1985, or the date of entry of the order, whichever is most recent in time, shall be prima facie proof of full payment of support owed and conclusive in favor of any person dealing in good faith and for a valuable consideration with the noncustodial parent.

(B) In the event of a legal disability of a noncustodial parent, the certificate of the personal representative of the noncustodial parent shall have the same effect.

(C) The certificate shall be sufficient to clear the lien against real property created under this section.

(2)(A) A noncustodial parent who makes a false material statement, knowing it to be false, in executing the certificate as provided in this section shall be subject to the criminal penalty for perjury.

(B) The certificate as provided in this section shall be considered a statement under oath in an official proceeding for purposes of criminal prosecutions.

(3) The criminal prosecution provided for in this subsection shall not be exclusive and shall not supersede the rights that the custodial parent may have to pursue civil remedies against the noncustodial parent.

(e)(1) The lien created under this section may be cancelled or discharged upon full satisfaction.

(2) The lien is satisfied in full when the decree or order so finds or directs or, in the absence of such a decree or order, when all children covered under the order reach majority or are otherwise emancipated or die and all arrearages accruing under the decree, order, or judgment are paid in full according to the payment records of the court or by sworn affidavit of the person to whom support was paid.

(f) Notwithstanding other statutes in conflict with this section, the liens authorized by this subchapter shall continue in full force for three (3) years from the date when all children covered under the order reach

majority or are emancipated or die without necessity or limitation of revivor under § 16-65-117 or § 16-65-501.

**History.** Acts 1985, No. 989, § 2; 1986 (2nd Ex. Sess.), No. 13, § 1; A.S.A. 1947, § 34-1220; Acts 1997, No. 1296, § 28.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

### RESEARCH REFERENCES

**Ark. L. Notes.** Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

**U. Ark. Little Rock L.J.** Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

### CASE NOTES

#### **Bankruptcy.**

The ex-wife of a bankrupt has a lien on the bankruptcy estate for the amount of unpaid child support payments due on the date that the bankruptcy petition was filed. *In re Benefield*, 102 B.R. 157 (Bankr. E.D. Ark. 1989).

Child support payments accruing after the filing of a petition in bankruptcy are not allowable claims in a chapter 7 case. *In re Benefield*, 102 B.R. 157 (Bankr. E.D. Ark. 1989).

#### **9-14-231. Overdue support as lien on personal property.**

(a)(1)(A) Support that has been ordered paid through the registry of the court or through the Arkansas child support clearinghouse and that has become overdue shall become a lien on all personal property owned by the noncustodial parent wherever it may be found and need not be limited to the confines of the county where the circuit court is sitting.

(B) A lien originating in another state shall be accorded full faith and credit as if the lien originated in the State of Arkansas.

(2) Upon proof that the noncustodial parent has refused or failed to support his or her child or children pursuant to the order, the court may cause the property to be immediately surrendered to the sheriff of the county where the property is located and may direct the sheriff to take action as necessary to have it sold and apply the proceeds from any sale thereof toward the costs of the sale, any superior liens, the support obligation, including court costs and any attorney's fees awarded pursuant thereto, and any inferior liens.

(3) Any amounts in excess of the overdue support, costs, fees, and other liens shall be paid to the noncustodial parent.

(4) Any person who may purchase any personal property owned by the noncustodial parent for value and without notice of the lien for support shall take the property free of the lien.

(b) The lien against personal property created in this section shall bear the same priority as set forth in § 4-9-322.

**History.** Acts 1985, No. 989, § 3; A.S.A. 1947, § 34-1221; Acts 1987, No. 533, § 1;

1997, No. 1296, § 29; 1999, No. 1514, § 14; 2003, No. 1473, § 16.



**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

**RESEARCH REFERENCES**

<b>Ark. L. Notes.</b> Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.	Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.
<b>U. Ark. Little Rock L.J.</b> Legislative	Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

**9-14-232. Health care coverage.**

(a) In all cases in which the support and care of any children are involved, the court may order either parent to secure and maintain health care coverage for the benefit of the children when health care coverage is available or becomes available to the parent at a reasonable cost.

(b)(1) When the noncustodial parent has secured such coverage, the signature of the custodial parent, indicated as such, shall be a valid authorization to the coverage provider or insurer for the purposes of processing a payment to the children’s health services provider.

(2) An order for health care coverage shall operate as an assignment of all benefit rights to require the insurer or coverage provider of the health care coverage to pay benefits for services rendered to the children to the custodial parent or to the children’s health services provider.

**History.** Acts 1985, No. 989, § 4; A.S.A. 1947, § 34-1222; Acts 1993, No. 965, § 1.

**Cross References.** Assignment of right to child support to Office of Child Support Enforcement by recipient of med-

icaid assistance, § 20-77-109.  
For child support enforcement guidelines, see the Appendix at the end of this title.

**9-14-233. Arrearages — Interest and attorney’s fees — Work activities and incarceration.**

(a) All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum unless the owner of the judgment or the owner’s counsel of record requests prior to the accrual of the interest that the judgment shall not accrue interest.

(b) The circuit court shall award a minimum of ten percent (10%) of the support amount due or any reasonable fee, including a contingency fee approved by the circuit court, as attorney’s fees in actions for the enforcement of payment of support provided for in the order.

(c) Collection of interest and attorney’s fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

(d)(1) In all cases brought pursuant to Title IV-D of the Social Security Act wherein the custodial parent or children receive temporary assistance for needy families or benefits under the food stamp program, the Supplemental Security Income Program, Medicaid, and the Chil-

dren's Health Insurance Program and the obligated parent owes overdue child support, the court shall order the obligated parent to pay the overdue amount according to a plan approved by the court and in compliance with this Code.

(2)(A) If the obligated parent subject to such a plan is not incapacitated, the circuit court may order the obligated parent to participate in work activities including, but not limited to, unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience including work associated with the refurbishing of publicly assisted housing in the event that sufficient private sector employment is not available.

(B) The number of hours that the obligated parent must participate in work activities per week shall be set by the court in an appropriate order.

(C) Additionally, the circuit court may order the obligated parent to spend a minimum number of hours engaged in applying for available positions that the obligor is qualified to fill and keep records of such activities as directed by the court.

(3) If the obligated parent can demonstrate enrollment and full participation in job-related training, which may include on-the-job-training, job search and job readiness assistance, community service programs, vocational education training not to exceed twelve (12) months' duration, job skills training directly related to employment, education directly related to employment if the obligated parent has not received a high school diploma or general education development certificate, the circuit court may substitute such participation in lieu of work activities as set out in subsection (e) of this section.

(e) If the obligated parent who is not incapacitated refuses to pay past due support or refuses to engage in work activities or seek work activities as ordered by the court, the court may order the obligated parent to be incarcerated.

(f) In any action brought for the enforcement of a child support obligation, whenever the court orders an obligated parent to be incarcerated for failure to obey a previous order, the court may further direct that the obligated parent be temporarily released from confinement to engage in work activity upon such terms and conditions as the court deems just.

**History.** Acts 1989, No. 383, § 2; 1995, No. 707, § 1; 1997, No. 1296, § 30; 1999, No. 1514, §§ 15, 16; 2001, No. 1248, §§ 11-13.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 9-14-201 — 9-14-232 may not apply to this section which was

enacted subsequently.

**Meaning of "this code".** See § 1-2-113(b).

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

# RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.  
**Legislation, 2001 Arkansas General As-**

## CASE NOTES

### ANALYSIS

**Attorney's Fee.**  
**Judgment Interest.**

#### Attorney's Fee.

Award of attorney's fees to an adult son seeking unpaid child support was proper because subsection (b) of this section did not require the trial court to award a contingency fee. *Mills v. Mills*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 212 (Mar. 11, 2009).

#### Judgment Interest.

Upon awarding unpaid child support to a 22-year-old son, who intervened in a

domestic relations case between his parents to collect the unpaid support on his own behalf, the trial court erred under subsection (a) of this section in awarding interest from the date the petition to collect child support was filed because it should have been awarded from the date the child support should have been paid. *Mills v. Mills*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 212 (Mar. 11, 2009).

**Cited:** *Gould v. Gould*, 308 Ark. 213, 823 S.W.2d 890 (1992); *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

## 9-14-234. Arrearages — Finality of judgment.

(a) As used in this section, “physical custodian” means a natural or adoptive parent, a guardian, or a person or agency who has custody of a child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay support for the child or children.

(b) Any decree, judgment, or order that contains a provision for the payment of money for the support and care of any child or children through the registry of the court or the Arkansas child support clearinghouse shall be final judgment subject to writ of garnishment or execution as to any installment or payment of money that has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

(c)(1) The court may not set aside, alter, or modify any decree, judgment, or order that has accrued unpaid support prior to the filing of the motion.

(2) However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent.

(d)(1) In cases brought pursuant to Title IV-D of the Social Security Act, a change in the physical custodian of a child or children, other than a party to the child support order, shall require written notice to the clerk of the court to redirect the child support to the present physical custodian when that physical custodian has had custody of the child or children for more than eight (8) consecutive weeks, other than court-



ordered visitation, during which there is an obligation to pay child support.

(2) Any custodial parent who leaves a child in the physical custody of a third party for more than eight (8) consecutive weeks shall be presumed to have notice of the redirection of child support payments.

(e)(1) The physical custodian shall be responsible for giving notice to the clerk of the court.

(2)(A) Such notice shall be in writing and shall contain the following:

(i) The style of the case and the court docket number;

(ii) The names and addresses of any parents, guardians, or other caretakers;

(iii) The names of the child or children for whom child support is owed;

(iv) The name and address of the present physical custodian, along with a statement from the physical custodian that the child or children have resided with the physical custodian for more than eight (8) consecutive weeks other than court-ordered visitation;

(v) A statement that any parent, guardian, or other caretaker shall have ten (10) days after receipt of notice to file written objections; and

(vi) An affidavit from the physical custodian that the physical custodian has provided a copy of the notice required under subdivision (d)(1) of this section by personal service or by certified mail, restricted delivery, return receipt requested, to any parent, guardian, or other caretaker, and to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(B) Notification shall be sufficient under this section if mailed to the parent, guardian, or other caretaker at either the last known address provided to a court by the parent, guardian, or other caretaker, or to an address verified by the physical custodian.

(f) If no objection to the redirection of child support is filed with the clerk of the court within ten (10) days, the clerk shall redirect current child support payments to the physical custodian and so note the redirection on the payment records of the case.

(g) If an objection to redirection of child support is filed with the clerk of the court, the physical custodian or the office may petition the court for an order to redirect child support payments to the physical custodian.

(h) All current child support payments shall follow the child or children and shall be payable to the physical custodian as support for the child or children.

(i)(1) The amount of accrued arrearages or overdue support to which a physical custodian is entitled shall be prorated and payable to the physical custodian for the period of actual custody of any child or children for whom support is owed.

(2) If there has been more than one (1) physical custodian, each shall be entitled to receive accrued arrearages or overdue support for the period of their custody of any child or children for whom support is

owed, unless the court, for good cause shown and in the best interests of the child or children, shall find otherwise.

(j) Nothing in this section shall be construed to limit the jurisdiction of the court to proceed to enforce a decree, judgment, or order for the support of a minor child or children through contempt proceedings when the arrearage is reduced to judgment under subsection (b) of this section.

**History.** Acts 1989, No. 383, § 2; 1995, No. 1180, § 1; 1995, No. 1184, § 24; 1997, No. 1296, § 31.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 9-14-201 — 9-14-232 may not apply to this section which was enacted subsequently.

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**A.L.R.** Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th 385.

Right to credit on child-support arrearages for money given directly to child. 119 A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with non-custodial parent, other than for visitation or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for contributions to housing costs, utility bills, and other alleged household necessities made for child's benefit while child is not living with obligor parent. 123 A.L.R.5th 565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

**Ark. L. Rev.** Case Note, Roark v. Roark: An Expansion of the Application of Estoppel to Prohibit the Collection of Child Support Arrearages, 45 Ark. L. Rev. 631.

## CASE NOTES

### ANALYSIS

Construction.

Defenses.

Equitable Estoppel.

Exception.

Intent.

Method of Collection.

Modification.

Private Support Agreements.

Retroactive Effect.

Statute of Limitations.

### Construction.

Where parties' eldest son turned 18 on July 5, 1992, husband's child support obligation continued under this section; however, under § 9-14-237, husband's child support obligation for that son terminated by operation of law on August 13, 1993, the effective date of the section, and the chancellor erred in awarding child

support arrearage for eldest son beyond that date. *James v. James*, 52 Ark. App. 29, 914 S.W.2d 773 (1996).

Where no motion for modification of child support payments had been filed by the father, the existing support order still stood for the mother; this section requires the filing of a proper motion as a prerequisite to modification of support, which would be thwarted if a party could convert any pleading into a motion to modify support simply by including a general prayer for relief. *Martin v. Martin*, 79 Ark. App. 309, 87 S.W.3d 817 (2002).

Where mother and father were divorced in 1986, and the father was ordered to pay child support, and where the agency filed a “motion to set support” in 1995, the agency's failure to raise the issue of child-support arrearages for the years prior to 1995, did not act as a bar by *res judicata*, to seek collection of those arrearages. Of-

Office of Child Support Enforcement v. King, 81 Ark. App. 190, 100 S.W.3d 95 (2003).

Child support order against a noncustodial parent became final and enforceable as the noncustodial parent's motion to vacate was never heard and, thus, was deemed denied by operation of law after 30 days. Jones v. Billingsley, 363 Ark. 96, 211 S.W.3d 508 (2005).

### **Defenses.**

A child support judgment would also be subject to the equitable defenses that apply to all other judgments. Ramsey v. Ramsey, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

In a proper case, equitable defenses such as estoppel may apply so as to prevent the collection of past-due child-support payments. State Office of Child Support Enforcement v. Mitchell, 61 Ark. App. 54, 964 S.W.2d 218 (1998).

Order awarding mother past-due child support was upheld because the father had not filed any motion to modify the order on the basis that a later case prohibited child support payments based upon income from Social Security supplemental security income. Jones v. Billingsley, 88 Ark. App. 131, 195 S.W.3d 380 (2004).

Order giving father credit for child support payments from the date of a divorce decree in June 1999 through the end of July 2002, finding support paid in full for that time period, was proper where the father had provided support for the children by allowing the children and the mother to live in housing provided to him as part of his compensation, valued at \$350 per month; the father also provided the sole support for the children for a year when they lived with him. Office of Child Support Enforcement v. Goff, 96 Ark. App. 238, 240 S.W.3d 133 (2006).

### **Equitable Estoppel.**

The chancellor did not err in awarding child support arrearages to the mother, but refusing, on the basis of equitable estoppel, to award support for a period of time that the child at issue lived at his sister's home. Barnes v. Morrow, 73 Ark. App. 312, 43 S.W.3d 183 (2001).

Trial court erroneously recognized agreement to reduce child support between parties; evidence on record did not show equitable estoppel on the part of the

father. Shroyer v. Kauffman, 75 Ark. App. 267, 58 S.W.3d 861 (2001).

Because there was no court order modifying the 1986 child support order, "modified res judicata" did not come into play regarding a past opportunity to litigate issues of accrued support, nor was there an equitable basis to prevent the collection of past due child support. Office of Child Support Enforcement v. King, 81 Ark. App. 190, 100 S.W.3d 95 (2003).

### **Exception.**

Mother estopped from collecting past due child support from father, where the parents continued to live together after the divorce, and the father was the children's primary supporter subsequent to the divorce and until the parents separated. Ramsey v. Ramsey, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

### **Intent.**

Subsection (b)'s language in this section indicates the legislature's intent to incorporate both the general federal rule regarding modification and the exception to this rule. Grable v. Grable, 307 Ark. 410, 821 S.W.2d 16 (1991).

### **Method of Collection.**

The fact that a support order provides for income withholding to satisfy accrued support arrearages is irrelevant in determining whether garnishment provides a viable alternative method for collection. Stewart v. Norment, 328 Ark. 133, 941 S.W.2d 419 (1997).

This section and § 9-14-235(a) and (c) are consistent with each other; subsection (b) of this section codifies the rule that child support becomes a judgment when due and is subject to execution or garnishment, although the trial court has some discretion in setting the payments on the arrearage under § 9-14-235(a) and (c) provides that a parent who is owed child-support arrearages may utilize other enforcement methods to collect the arrearages. Hill v. Hill, 84 Ark. App. 132, 134 S.W.3d 6 (2003).

### **Modification.**

Trial court did not err in awarding mother past-due child support where the original order of support in 1995 was made prior to the ruling in Davis, which held that Arkansas courts could not order child support payments based on income



from federal SSI benefits; further, because the case was a one-issue case, which was tried on the pleadings and did not involve child custody, the trial judge did not abuse his discretion in denying father's motion to transfer. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004).

A support order remains in force until the obligor files a proper motion seeking modification; thus, the trial court erred in modifying its child-support rulings from \$1000 per month to \$300 per month after hearing testimony as to husband's financial situation because nothing in the record indicated that any such motion for modification had been filed. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Circuit court, in figuring father's income, properly ruled that the child support modifications were set on February 6, 2003, the effective date of the filing of the motion to modify; the circuit court's order contained substantial calculations of the father's income based upon previous tax returns that showed a material change in circumstances to justify a modification of child support. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006).

Trial court's February 10 order provided that the father was to pay \$35 per week in child support, and any changes to his support obligation had to be preceded by a motion to modify his child-support obligation; thus, as father's petition for change of custody contained a proper motion for modification, the trial court abused its discretion in retroactively modified the father's support obligation back to the February 10 order. *Shipp v. Shipp*, 94 Ark. App. 351, 230 S.W.3d 305 (2006).

In deciding to raise the amount of the father's child support obligation, there was no unpaid child support that would justify a contempt proceeding or invoke the provisions of this section. *Williams v. Williams*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 511 (June 17, 2009).

### **Private Support Agreements.**

Where two former spouses made an agreement on the amount of child support due monthly the chancellor could recognize the agreement as to payments due prior to the effective date of this section and § 9-12-312 but he could not recognize the parties' private agreement for the pay-

ments which fell due after the effective date of the enactment of those sections. *Sullivan v. Edens*, 304 Ark. 133, 801 S.W.2d 32 (1990), superseded by statute as stated in, *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992), superseded by statute as stated in, *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

Chancery courts are not to recognize private agreements modifying the amount of child support after July 20, 1987. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

Because § 9-12-312 and this section specifically provide that any decree which contains a provision for the payment of child support shall be a final judgment until either party moves to modify the order, where father did not file his petition to reduce support until over a year after the decree was entered, the unpaid support accrued as originally ordered until the motion to modify the judgment was filed. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

A private agreement between the parents to change the custody arrangement did not modify the support order; any change to an existing order must be made by a court. *Yell v. Yell*, 56 Ark. App. 176, 939 S.W.2d 860 (1997).

### **Retroactive Effect.**

Subsection (b) of this section prohibits only the modification of child support orders which retroactively affect the time period before the petition for modification was filed and proper notice was given to the opposing party. *Grable v. Grable*, 307 Ark. 410, 821 S.W.2d 16 (1991).

The order reducing defendant's child support obligations did not violate subsection (b) of this section since this order affected only obligations that were antecedent to the filing of his petition. *Grable v. Grable*, 307 Ark. 410, 821 S.W.2d 16 (1991).

Arkansas law does not allow a chancery court to make retroactive changes in a person's child-support obligations; retroactive modification may only be assessed from the time that a petition for modification is filed. *Yell v. Yell*, 56 Ark. App. 176, 939 S.W.2d 860 (1997).

In the 2002 order, although the trial judge referred to a modification, the judge clearly did not retroactively modify the child-support order, rather, the judge

clarified and enforced the original order that failed to recite the amount of support as required under the guidelines for the years commencing on and after August 1999, and the judge properly awarded the mother a judgment representing the difference between what the father should have paid and what the father actually paid. *Paschal v. Paschal*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 496 (June 11, 2003), substituted opinion, 82 Ark. App. 455, 117 S.W.3d 650 (2003).

Where a child-support order fails to comply with the Ark. Admin. Order No. 10 requirement to recite the amount of support, the order has no sum certain that is capable of modification, and in such cases, a trial judge may clarify the original order, setting a sum certain, and bringing the child-support order into compliance with Ark. Sup. Ct. Admin. Order No. 10; those cases requiring that retroactive modifications be assessed only from the time the petition for modification is filed do not apply until a specific amount of child support is ordered. *Paschal v. Paschal*, — Ark. App. —, — S.W.3d —, 2003 Ark. App. LEXIS 496 (June 11, 2003), substituted opinion, 82 Ark. App. 455, 117 S.W.3d 650 (2003).

Circuit court, in reviewing father's adjusted gross income for the years 2001 through 2003, made adjustments to reflect the significant increase in father's income since the initial ruling; thus, it did not err in ordering a retroactive modification of child support. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006).

### **Statute of Limitations.**

While this section provides that child support installments payable through the court registry become final judgments as they accrue, the general ten-year statute of limitations found at § 16-56-114 does not apply to actions to collect such arrearages; instead, the limitations period found at § 9-14-236(c) governs. *Sanderson v. Harris*, 330 Ark. 741, 957 S.W.2d 685 (1997).

**Cited:** *Gould v. Gould*, 308 Ark. 213, 823 S.W.2d 890 (1992); *Burns v. Burns*, 309 Ark. 602, 832 S.W.2d 251 (1992); *Laroe v. Laroe*, 48 Ark. App. 192, 893 S.W.2d 344 (1995); *Darr v. Bankston*, 327 Ark. 723, 940 S.W.2d 481 (1997); *Cole v. Harris*, 330 Ark. 420, 953 S.W.2d 586 (1997); *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998); *Frigon v. Frigon*, 89 Ark. App. 180, 201 S.W.3d 436 (2005).

## **9-14-235. Arrearages — Payment after duty to support ceases.**

(a) If a child support arrearage or judgment exists at the time when all children entitled to support reach majority, are emancipated, or die, or when the obligor's current duty to pay child support otherwise ceases, the obligor shall continue to pay an amount equal to the court-ordered child support, or an amount to be determined by a court based on the application of guidelines for child support under the family support chart, until such time as the child support arrearage or judgment has been satisfied.

(b) When the order of support directs an amount of support per child, as each child reaches majority, is emancipated, or dies, or the obligor's current duty to pay support otherwise ceases, the obligor shall continue to pay the amount set as child support, or an amount set by a court based on the application of the guidelines for child support under the family support chart, for that child if a judgment or child support arrearage exists until such time as the judgment or arrearage has been satisfied.

(c) Enforcement through income withholding, intercept of unemployment benefits or workers' compensation benefits, income tax intercept, additional payments ordered to be paid on the child support arrearage or judgment, contempt proceedings, or any other means of collection



shall be available for the collection of a child support arrearage or judgment until the child support arrearage or judgment is satisfied.

(d) Income withholding under § 9-14-221 may be used to satisfy a child support arrearage or judgment.

(e) As used in this section, “judgment” means unpaid child support and medical bills, interest, attorney’s fees, or costs associated with a child support case when such has been reduced to judgment by the court or become a judgment by operation of law.

(f) The purpose of this section is to allow the enforcement and collection of child support arrearages and judgments after the obligor’s duty to pay support ceases.

**History.** Acts 1989, No. 507, § 1; 1995, No. 1184, § 38; 2001, No. 1248, § 14.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 9-14-201 — 9-14-232 may not apply to this section which was

enacted subsequently.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**A.L.R.** Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th 385.

Right to credit on child-support arrearages for money given directly to child. 119 A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with non-custodial parent, other than for visitation

or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for contributions to housing costs, utility bills, and other alleged household necessities made for child’s benefit while child is not living with obligor parent. 123 A.L.R.5th 565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

## CASE NOTES

### ANALYSIS

In General.  
Applicability.  
Hardship.

### In General.

This section governs actions to collect on child-support judgments to the extent that such actions were not yet barred at the time this section became effective and to the extent that such actions seek only to require the obligor, whose current duty to pay support has ceased, to continue making regular court-ordered child-support payments until such time as the judgment is satisfied. *Malone v. Malone*, 338 Ark. 20, 991 S.W.2d 546 (1999).

Section 9-14-234 and subsections (a) and (c) of this section are consistent with each other; § 9-14-234(b) codifies the rule

that child support becomes a judgment when due and is subject to execution or garnishment, although the trial court has some discretion in setting the payments on the arrearage under subsection (a) and subsection (c) provides that a parent who is owed child-support arrearages may utilize other enforcement methods to collect the arrearages. *Hill v. Hill*, 84 Ark. App. 132, 134 S.W.3d 6 (2003).

### Applicability.

Because a mother was seeking to enforce a judgment that ordered a father to pay arrearages, rather than bringing an action to recover accrued child-support arrearages from an initial support order, § 9-14-236 (2008) was not applicable and the contempt action against a father was not time barred. The father could be held in contempt and sent to jail because this



section, the applicable statute to enforce the judgment, did not impose a time limitation on the enforcement of child-support judgments. *Johns v. Johns*, 103 Ark. App. 55, 286 S.W.3d 189 (2008).

### **Hardship.**

Father required to pay back support to reimburse the state, but at a lower amount than prescribed in the guidelines because of the hardship a higher amount would impose on children he was currently supporting. *Lovelace v. Office of Child Support Enforcement*, 59 Ark. App. 235, 955 S.W.2d 915 (1997).

A chancellor did not err by allowing a noncustodial parent to satisfy the arrearage he owed by making monthly installment payments in the amount of \$225 instead of following the requirements of subsection (a) of this section, where the noncustodial parent requested that the chancellor set the arrearage payments at \$225 per month because of his other financial obligations, including other child support payments. *Office of Child Support Enforcement v. Tyra*, 71 Ark. App. 330, 29 S.W.3d 780 (2000).

## **9-14-236. Arrearages — Child support limited — Limitations period.**

(a) As used in this section:

(1) “Accrued child support arrearages” means a delinquency owed under a court order or an order of an administrative process established under state law for support of any child or children that is past due and unpaid;

(2) “Action” means any complaint, petition, motion, or other pleading seeking recovery of accrued child support arrearages;

(3) “Initial support order” means the earliest order, judgment, or decree entered in the case by the court or by administrative process that contains a provision for the payment of money for the support and care of any child or children; and

(4) “Moving party” means any of the following:

(A) The custodial parent;

(B) Any person or agency to whom custody of a minor child has been given or relinquished;

(C) The minor child through his or her guardian or next friend;

(D) A person for whose benefit the support was ordered, within five (5) years of obtaining his or her majority; or

(E) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the custodial parent or person to whom custody has been relinquished or awarded is or has been receiving assistance in the form of Aid to Families with Dependent Children or has contracted with the office for the collection of support.

(b) In any action involving the support of any minor child or children, the moving party shall be entitled to recover the full amount of accrued child support arrearages from the date of the initial support order until the filing of the action.

(c) Any action filed pursuant to subsection (b) of this section may be brought at any time up to and including five (5) years beyond the date the child for whose benefit the initial support order was entered reaches eighteen (18) years of age.

(d) No statute of limitation shall apply to an action brought for the collection of a child support obligation or arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

(e) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter, and shall retroactively apply to all child support orders now existing.

**History.** Acts 1989, No. 525, § 1; 1991, No. 870, § 2; 1995, No. 1184, § 14.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 9-14-201 — 9-14-232 may not apply to this section which was enacted subsequently.

**Publisher’s Notes.** Acts 1989, No. 525, § 1, was also codified as § 16-56-129 [repealed].

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

RESEARCH REFERENCES

**A.L.R.** Right to credit against child support arrearages for time child lived in custody of noncustodial parent, other than for visitation, where custodial parent’s approval was not in issue or was disputed by parties. 112 A.L.R.5th 185.

Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th 385.

Right to credit on child-support arrearages for money given directly to child. 119 A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with non-custodial parent, other than for visitation or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for con-

tributions to housing costs, utility bills, and other alleged household necessities made for child’s benefit while child is not living with obligor parent. 123 A.L.R.5th 565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

**Ark. L. Rev.** Case Note, Roark v. Roark: An Expansion of the Application of Estoppel to Prohibit the Collection of Child Support Arrearages, 45 Ark. L. Rev. 631.

**U. Ark. Little Rock L.J.** Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

Moore, Child Support Arrearages: What Statute of Limitations (If Any) Applies?, 19 U. Ark. Little Rock L.J. 487.

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

CASE NOTES

ANALYSIS

- Purpose.
- Applicability.
- Assignment.
- Delay.
- Retroactive Application.
- Standing.
- Statute of Limitations.

**Purpose.**

The purpose of subsection (b) of this section is to prohibit the court from reducing the arrearages from periodic child support after the payments have already fallen due; the General Assembly did not

intend by enacting this subsection to abrogate the general rule that a parent is legally obligated to support his minor child even in the absence of a court order. Nason v. State Child Support Enforcement Unit, 55 Ark. App. 164, 934 S.W.2d 228 (1996).

**Applicability.**

The five-year statute of limitation found at § 16-56-115 is applicable to those support payments due prior to the effective date of this section and § 16-56-129 (repealed), and the new ten-year statute of limitation found in those sections is applicable to payments accruing after the effective date of those sections. Sullivan v.

Edens, 304 Ark. 133, 801 S.W.2d 32 (1990), superseded by statute as stated in, *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992), superseded by statute as stated in, *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996); *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992).

The legislature cannot expand a statute of limitation so as to revive a cause of action already barred, but has the power to affect causes of action not yet barred. *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992).

This section applies retroactively to expand the statute of limitations for causes of action for delinquent child-support payments not barred on the date of its enactment. *Branch v. Carter*, 326 Ark. 748, 933 S.W.2d 806 (1996).

In actions for child-support arrearages, the limitation period found in this section applies, not the ten-year period in § 16-56-114. *Cole v. Harris*, 330 Ark. 420, 953 S.W.2d 586 (1997).

This section is the applicable statute when the Office of Child Support Enforcement is pursuing collection of support arrearages for support ordered in a prior judgment. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

Because a mother was seeking to enforce a judgment that ordered a father to pay arrearages, rather than bringing an action to recover accrued child-support arrearages from an initial support order, this section was not applicable and the contempt action against a father was not time barred. The father could be held in contempt and sent to jail because the applicable statute to enforce the judgment, § 9-14-235, did not impose a time limitation on the enforcement of child-support judgments. *Johns v. Johns*, 103 Ark. App. 55, 286 S.W.3d 189 (2008).

### **Assignment.**

A custodial mother's assignment to the Office of Child Support Enforcement (OCSE) of her right to support was appropriate because the child at issue had not yet attained the age of 23 at the time she made the assignment nor at the time OCSE filed an action to recover the arrearages. *Clemmons v. Office of Child Support Enforcement*, 72 Ark. App. 443, 37 S.W.3d 687 (2001), *aff'd*, 345 Ark. 330, 47 S.W.3d 227 (2001).

### **Delay.**

Where there was no agreement between the parties to reduce or terminate the right to alimony, and the plaintiff's delay was the result of frustration by another state's laws, the mere fact that plaintiff delayed pursuing rights to obtain a judgment on past due support did not prevent plaintiff from seeking judgment. *Benn v. Benn*, 57 Ark. App. 190, 944 S.W.2d 555 (1997).

### **Retroactive Application.**

Child support actions can be brought at any time up to and including five years beyond the time the child reaches the age of 18 years, and this limitation shall apply retroactively. *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992).

The limitations period of this section, as amended by Acts 1991, No. 870, retroactively applied to all delinquent payments which accrued after March 29, 1986. *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996), *aff'd*, 326 Ark. 748, 933 S.W.2d 806 (1996).

The trial court had authority to award a judgment for retrospective child support. *Nason v. State Child Support Enforcement Unit*, 55 Ark. App. 164, 934 S.W.2d 228 (1996).

This section cannot be retroactively applied beyond March 29, 1986; any cause of action for child-support arrearages accruing prior to March 29, 1986, is barred. *King v. State, Office of Child Support Enforcement*, 58 Ark. App. 298, 952 S.W.2d 180 (1997).

### **Standing.**

Administrator of mother's estate had standing to sue to cover the arrears the father owed in child support, insurance premiums, and medical expenses at the time of her death, even though the father had custody of the children at the time of the suit. *Darr v. Bankston*, 327 Ark. 723, 940 S.W.2d 481 (1997).

Because the General Assembly did not confer the right to collect arrearages only upon the parent having physical custody of a minor child until the child reached majority, and then only upon the adult child, the mother retained the right to pursue child-support arrearages even after the child reached age 18. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).



This section does not place a limitation on who can pursue an action for collection of child-support arrearages from the list of possible parties. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

### Statute of Limitations.

There is no constitutional impediment, except in title to property cases, to increasing the length of a limitation period and making the increase retroactive to cover claims already in existence; however, the General Assembly may not expand a limitation period so as to revive a claim already barred. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

While § 9-14-234 provides that child support installments payable through the court registry become final judgments as they accrue, the general ten-year statute of limitations found at § 16-56-114 does not apply to actions to collect such arrearages; instead, the limitations period found in subsection (c) of this section governs.

*Sanderson v. Harris*, 330 Ark. 741, 957 S.W.2d 685 (1997).

Because the mother filed her action within five years of the child's 18th birthday, under either Arkansas or California law, she timely filed her action to collect child support arrearages. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

This section allows a custodial parent to file a petition to collect child-support arrearages after the child has attained the age of majority but prior to his twenty-third birthday. *Clemmons v. Office of Child Support Enforcement*, 72 Ark. App. 443, 37 S.W.3d 687 (2001), *aff'd*, 345 Ark. 330, 47 S.W.3d 227 (2001).

**Cited:** *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Arkansas Office of Child Support Enforcement v. House*, 320 Ark. 423, 897 S.W.2d 565 (1995); *Arkansas Dep't of Human Servs. v. Harris*, 322 Ark. 465, 910 S.W.2d 221 (1995); *Office of Child Support Enforcement v. Pyron*, 363 Ark. 521, 215 S.W.3d 637 (2005).

## 9-14-237. Expiration of child support obligation.

(a)(1) Unless a court order for child support specifically extends child support after these circumstances, an obligor's duty to pay child support for a child shall automatically terminate by operation of law:

(A)(i) When the child reaches eighteen (18) years of age unless the child is still attending high school.

(ii) If the child is still attending high school, upon the child's high school graduation or the end of the school year after the child reaches nineteen (19) years of age, whichever is earlier;

(B) When the child:

(i) Is emancipated by a court of competent jurisdiction;

(ii) Marries; or

(iii) Dies;

(C) Upon the marriage of the parents of the child to each other; or

(D) Upon the entry of a final decree of adoption or an interlocutory decree of adoption that has become final under § 9-9-201 *et seq.* and thereby relieves the obligor of all parental rights and responsibilities.

(2) However, any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied pursuant to § 9-14-235.

(b)(1) If the obligor has additional child support obligations after the duty to pay support for a child terminates, then either the obligor, custodial parent, physical custodian, or the Office of Child Support Enforcement of the Revenue Division of Department of Finance and Administration, within thirty (30) days subsequent to the expiration of the ten-day period allowed for the notification as provided in subdivi-

sion (b)(5) of this section, may file a motion with a court of competent jurisdiction requesting that the court determine the amount of the child support obligation for the remaining children.

(2) The remaining obligations, subsequent to the expiration of the thirty-day period contained in subdivision (b)(1) of this section, shall be adjusted by operation of law to an amount to be determined by using the most recent version of the family support chart pursuant to § 9-12-312(a)(2) for any remaining children for whom an obligation for child support exists.

(3) If the most recent child support order either was entered prior to the adoption of the family support chart by the Supreme Court or the support amount, as indicated by the order, deviated from the family support chart, then the issue of the amount of the obligor's child support obligation shall be decided by a court of competent jurisdiction.

(4)(A) In the event a review is requested, the court shall apply the family support chart for the remaining number of children from the date of the termination of the duty, subject to any changed circumstances, which shall be noted in writing by the court.

(B) Deviation from the family support chart shall be noted in the court order or on the record, as appropriate.

(5)(A) The obligor shall provide written notification of the termination of the duty of support to the custodial parent, the physical custodian, the clerk of the court responsible for receipt of the child support payments, the obligor's employer, if income withholding is in effect, and the office, if applicable, within ten (10) days of the termination of the duty of support.

(B) The obligor shall enclose with the written notification of termination a copy of the most recent child support order.

(C) The notification shall state the name and age of each child for whom the obligation to pay child support has ceased and the name and age of children set out in prior terminations of child support made pursuant to this subsection.

(c) No statute of limitations shall apply to an action brought for the collection of a child support obligation of arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

**History.** Acts 1993, No. 326, § 1; 1999, No. 1075, § 1; 2003, No. 1020, § 7; 2007, No. 337, § 1; 2009, No. 635, § 1.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 9-14-201, 9-14-202, and 9-14-204 — 9-14-236 may not apply to this section which was enacted subsequently.

**Amendments.** The 2007 amendment, in (a)(1)(A), added (ii) and made related

changes, and substituted "unless the child is still attending high school" for "or should have graduated from high school, whichever is later" in present (i).

The 2009 amendment inserted (a)(1)(D) and made related changes.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## RESEARCH REFERENCES

**Ark. L. Rev.** The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses, 56 Ark. L. Rev. 93.

**U. Ark. Little Rock L.J.** Legislative

Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

**U. Ark. Little Rock. L. Rev.** Annual Survey of Case Law, Family Law, 28 U. Ark. Little Rock L. Rev. 739.

## CASE NOTES

## ANALYSIS

Applicability.

Agreements.

Special Circumstances.

Termination of Support.

**Applicability.**

Where parties' eldest son turned 18 on July 5, 1992, husband's child support obligation continued under § 9-14-234; however, under this section, husband's child support obligation for that son terminated by operation of law on August 13, 1993, the effective date of this section, and the chancellor erred in awarding child support arrearage for eldest son beyond that date. *James v. James*, 52 Ark. App. 29, 914 S.W.2d 773 (1996).

Recalculation of support, based on the reduced value set forth in the family support guidelines for one child after an older child turned 18, was not an improper attempt to retroactively modify a judgment. *Mixon v. Mixon*, 65 Ark. App. 240, 987 S.W.2d 284 (1999).

A chancellor did not err by calculating a reduced amount of arrearage owed by the noncustodial parent by taking into account those child-support obligations that terminated by operation of this section upon the graduation from high school of the parties' children. *Office of Child Support Enforcement v. Tyra*, 71 Ark. App. 330, 29 S.W.3d 780 (2000).

Where father agreed to pay child support in the amount of \$1,200 per month, which was above the amount required under the child support chart, so that the mother could use child support funds to pay tuition for both children to attend private school, appellate court held that the "child support" provision and the "college expenses" provision of the decree had to be read together, and concluded that it was the intent of the parties that the father's child support obligation would

cease upon each child reaching the age of majority; however, if a child chose to attend college, the parties then agreed to share the expense of supporting the child while in college. *Harris v. Harris*, 82 Ark. App. 321, 107 S.W.3d 897 (2003).

**Agreements.**

Where a mother and the Office of Child Support Enforcement entered into a proposed agreement regarding child support arrearages after the parties' son reached the age of 18 and custody of their daughter was changed to the father, it was not error to refuse to follow the agreement, because the trial court was not bound by an independent agreement concerning child support and the trial court retained jurisdiction over child support. *Roark v. Office of Child Support Enforcement*, 101 Ark. App. 382, 278 S.W.3d 114 (2008).

**Special Circumstances.**

Where child had reached the age of majority and had finished one year as a student at the University of Arkansas, even though he played in the University Band and when he went on band trips had to pay a portion of the cost of room and board, and even though he had allergies and had to take allergy medicine, there was nevertheless no showing of special circumstances that would justify an order of support. *Aikens v. Lee*, 53 Ark. App. 1, 918 S.W.2d 204 (1996).

The chancellor erred in terminating child support on the ground that the child at issue should have graduated from high school by his 18th birthday where the child's graduation was delayed because both parties agreed that the child should repeat second grade; however, the termination of child support was nevertheless affirmed because the stipulations of the parties indicated that the child spent only 25 percent of his time in the custodial parent's home. *Office of Child Support Enforcement v. Calbert*, 70 Ark. App. 520, 20 S.W.3d 450 (2000).



Trial court erred in reinstating child support for the parties' daughter who was emancipated and had reached the age of majority where there was no medical evidence or testimony as to the extent of the daughter's alleged impairment following an automobile accident other than the personal opinions of the parties and their daughter. *Rogers v. Rogers*, 83 Ark. App. 206, 121 S.W.3d 510 (2003).

Except for personal items, all of the needs of the parties' adult son, who was mentally retarded, were covered by his SSI check, including housing, utilities, food, transportation, or phone bills; also, his pharmacy bills were covered expenses. Furthermore, he had approximately \$300 in earned income and a small amount left from his SSI check after his other expenses were paid to purchase personal items; thus, the son's move into a group home from his mother's home constituted a sufficient change in circumstances to warrant termination of the father's child-support obligation. *Bagley v. Williamson*, 101 Ark. App. 1, 269 S.W.3d 837 (2007).

#### **Termination of Support.**

Because the duty to pay child support terminates by operation of law, the Arkansas Legislature did not intend that the notice provision of subdivision (b)(5)(A) of

this section require mandatory or strict compliance; therefore, a trial court should have calculated a father's obligation based on the amount owed for two minor children after a third child turned 18. *Ward v. Doss*, 361 Ark. 153, 205 S.W.3d 767 (2005).

In a divorce case, the trial court did not err by ordering former husband to pay former wife \$100 per month in alimony because the evidence showed that he had the ability to pay, he was not responsible for child support after the child's graduation from high school, and the child's college expenses were not considered; moreover, husband's arguments concerning wife's decision to move and her accountability for her financial situation were rejected. *Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006).

Because a minor child had died, a mother was unable to bring a child support action against a father under § 9-14-105(b) since the mother no longer had physical custody of the child; moreover, the father's obligation to support the child terminated upon her death under subdivision (a)(1)(B)(iii) of this section. *Hardy v. Wilbourne*, 370 Ark. 359, 259 S.W.3d 405 (2007), cert. denied, — U.S. —, 128 S. Ct. 1245, 170 L. Ed. 2d 65 (2008).

**Cited:** *Laroe v. Laroe*, 48 Ark. App. 192, 893 S.W.2d 344 (1995).

### **9-14-238. Collection of support obligations.**

(a) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to enter into professional service contracts with private individuals or businesses and public agencies concerning the establishment, and enforcement through court-ordered proceedings, of the collection, monitoring, and distribution of support obligations, including service of process as defined by § 9-14-206(d).

(b)(1) The Arkansas Title IV-D child support enforcement agency may collect unreimbursed public or medical assistance under a cooperative agreement with the state's Title IV-A or Medicaid agencies for any unreimbursed public or medical assistance owed the state.

(2) Under any cooperative agreement that disallows the expenditure of federal Title IV-D funds, Title IV-D expenditures for activities associated with the recovery of state medicaid or unreimbursed public assistance funds shall be paid to the Title IV-D agency by the state agency for which the funds are recovered.

**History.** Acts 1993, No. 1249, §§ 1, 2; 1997, No. 1296, § 32.

**A.C.R.C. Notes.** References to "this

subchapter" in §§ 9-14-201, 9-14-202, and 9-14-204 — 9-14-236 may not apply to this section which was enacted subsequently.

**Publisher's Notes.** The reference in this section to "Title IV-A or Medicaid agencies" probably refers to divisions of the Department of Human Services and the reference to "Title IV-D agency" probably refers to the Office of Child Support Enforcement.

**U.S. Code.** The references in this section to "Title IV-A" and "Title IV-D" are

presumably references to Titles IV-A and IV-D of the Social Security Act. Title IV-A is codified as 42 U.S.C. § 601 et seq., and Title IV-D is codified as 42 U.S.C. § 651 et seq.

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

## **9-14-239. Suspension of license for failure to pay child support.**

(a) As used in this section:

(1) "Department" means the Department of Finance and Administration or its duly authorized agents;

(2) "License" means an Arkansas driver's license issued pursuant to § 27-16-101 et seq., and § 27-20-101 et seq., or an occupational, professional, or business license regulated under Title 17 of this Code and all other licenses regulated under Titles 2-6, 8, 9, 14, 15, 20, 22, 23, and 27 of this Code;

(3) "Office" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration;

(4) "Other licensing entity" means any other state agency, department, board, commission, municipality, or any entity within the State of Arkansas or the United States that issues or renews an occupational, professional, or business license regulated under Title 17 of this Code and all other licenses regulated under Titles 2-6, 8, 9, 14, 15, 20, 22, 23, and 27 of this Code; and

(5) "Permanent license plate" means the license plate, issued by the department, that by law must be affixed to every vehicle as defined by § 27-14-1002 and every motorized cycle as defined by § 27-20-101.

(b)(1)(A) Unless an obligor executes an installment agreement or makes other necessary and proper arrangements with the office, the office shall notify the department or other licensing entity to suspend the license or permanent license plate of the obligor whenever the office determines that one (1) of the following conditions exists:

(i) The obligor is delinquent on a court-ordered child support payment or an adjudicated arrearage in an amount equal to three (3) months' obligation or more; or

(ii) The obligor is the subject of an outstanding failure to appear warrant, a body attachment, or a bench warrant related to a child support proceeding.

(B) Prior to the notification to suspend the license of the obligor, the office shall determine whether the obligor holds a license or permanent license plate with the department or other licensing entity.

(2)(A) The office shall notify the obligor that a request will be made to the department to suspend the license or permanent license plate sixty (60) days after the notification unless a hearing with the office is requested in writing within thirty (30) days to determine whether one (1) of the conditions of suspension does not exist.

(B) Notification shall be sufficient under this subdivision (b)(2) if mailed to the obligor at either the last known address provided to the court by the obligor pursuant to § 9-14-205 or to the address used by the obligor on the license or the application for a permanent license plate.

(c) Following a determination by the office under subdivision (b)(1) of this section, the office shall notify the department or other licensing entity to suspend the license or permanent license plate of the obligor.

(d)(1) The department or other licensing entity, upon receipt of the notification, shall immediately suspend the license or permanent license plate of the obligor.

(2) This suspension shall remain in effect until the department or other licensing entity is notified by the office to release the suspension.

(e)(1) If the obligor enters into an installment agreement or makes other necessary and proper arrangements with the office to pay child support, the office shall immediately notify the department or other licensing entity to restore the license or permanent license plate of the obligor.

(2) In the case of fraud or mistake, the office shall immediately notify the department or other licensing entity to restore the license or permanent license plate of the obligor, as appropriate.

(f) The office and the department are authorized to promulgate rules and regulations necessary to carry out this section in the interests of justice and equity.

(g) The office is authorized to seek an injunction in the circuit court of the county in which the child support order was entered, restraining the obligor from driving or from any licensed or permitted activity during the time the obligor's license or permanent license plate is suspended.

(h)(1)(A) Any obligor whose license or permanent license plate has been suspended may appeal to the circuit court of the county in which the child support order was entered or transferred, within thirty (30) days after the effective date of the suspension, by filing a petition with a copy of the notice of the suspension attached, or with a copy of the final administrative hearing decision of the office, with the clerk of the circuit court and causing a summons to be served on the Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(B) For persons paying child support pursuant to § 9-17-501 or § 9-17-507, the foreign order shall be registered by the office pursuant to § 9-17-601 et seq.

(2) The case shall be tried de novo.

(3) The circuit judges are vested with jurisdiction to determine whether the petitioner is entitled to a license or permanent license plate or whether the decision of the hearing officer should be affirmed, modified, or reversed.

(i) Nothing provided in this section shall be interpreted to prohibit the circuit court from suspending a permanent license plate or a license



through contempt proceedings resulting from the nonpayment of child support.

**History.** Acts 1995, No. 752, § 1; 1997, No. 1296, § 33; 1999, No. 1514, §§ 17, 18; 2003, No. 1020, § 8; 2003, No. 1185, § 17.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cogni-

zable by Circuit, Chancery, Probate and Juvenile Courts..."

**Meaning of "this code".** See § 1-2-113(b).

**Cross References.** For child support enforcement guidelines, see the Appendix at the end of this title.

Suspension of commercial driver's license for delinquent child support, § 27-23-125.

## CASE NOTES

**Cited:** State, Office of Child Support Enforcement v. Ross, 329 Ark. 1, 945 S.W.2d 374 (1997).

### 9-14-240. Expiration of income withholding.

(a)(1) Income withholding for child support shall terminate by operation of law when one (1) of the conditions set out in § 9-14-237(a) is met.

(2) However, in no event shall income withholding for child support terminate:

(A) When a current child support obligation exists; or

(B) When a child support arrearage exists, until such time as the arrearage has been satisfied.

(b)(1) If there are no child support arrearages, the obligor may terminate income withholding for child support without petitioning the court by giving written notice, in person or by certified mail, to the obligor's employer, the custodial parent or physical custodian, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, the Arkansas child support clearinghouse, and the clerk of the court.

(2) The notice shall be given no earlier than thirty (30) days before the termination of the duty to pay support, and shall state:

(A) The name and address of the obligor;

(B) The name and address of the obligor's employer;

(C)(i) That income withholding for child support will be terminated;

(ii) The date of intended termination; and

(iii) The basis for termination of income withholding; and

(D) That the custodial parent or physical custodian, the office, or the clerk of the court has the right to file written objection to the termination.

(3) The written objection to the termination shall:

(A) Be made by certified mail to the obligor and the obligor's employer within ten (10) days after receipt of the notice of intent to terminate income withholding for child support;

(B) State that the obligor's duty to pay child support has not been fulfilled as required by court order; and

(C) Set forth the reasons for nonfulfillment.

(4) If a written objection is filed as provided in this section, then income withholding for child support shall continue until such time as an order is entered that terminates, alters, or amends income withholding for child support.

(c)(1) Income withholding for child support may be terminated without petitioning the court by filing with the clerk of the court and submitting to the obligor's employer an affidavit attested to by the obligor, the custodial parent or physical custodian, and the office.

(2) The affidavit shall state:

(A) The name and address of the obligor and the custodial parent or physical custodian;

(B) The name and address of the obligor's employer;

(C) The style of the court case and number;

(D) That one (1) of the conditions set forth in § 9-14-237(a) has been met;

(E) The date that income withholding for child support shall terminate;

(F) That there are no child support arrearages; and

(G) That the office by its agent, designee, or contractor, whose name and address is provided, has determined that no debt to the state is owing in the cause based on an assignment of rights under §§ 9-14-109 and 20-77-109.

(d)(1) In any action to reinstate income withholding for child support, and when the court determines that income withholding for child support was wrongly terminated pursuant to subsection (b) or subsection (c) of this section, the court shall award costs and a minimum of ten percent (10%) of the support amount due as attorney's fees to the prevailing party.

(2)(A) If the custodial parent or physical custodian, the office, or the clerk of the court objects to the termination of income withholding for child support and a petition is filed for an order terminating income withholding for child support and the obligor prevails, the court may award attorney's fees and costs to the obligor.

(B) However, there shall be no award for attorney's fees and costs against the office or the clerk of the court.

(e) Notices of intent to terminate income withholding for child support filed by the obligor, and any written objection filed by the custodial parent or physical custodian, the office, or the clerk of the court, shall be executed under penalty for false swearing.

(f)(1) If a court determines that the amount withheld for child support exceeded the obligor's child support obligation, the obligor shall be entitled to reimbursement.

(2) The court may order the custodial parent or physical custodian to repay the excess amounts withheld and may refer to the family support chart to fix a schedule of repayments.

**History.** Acts 1995, No. 1075, § 1; enforcement guidelines, see the Appendix 1997, No. 1296, § 34. at the end of this title.

**Cross References.** For child support

### **9-14-241. Referrals for criminal prosecution.**

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall refer to the prosecuting attorney of the appropriate judicial district for prosecution under § 5-26-401 and any other applicable criminal statute, all cases in which:

(1) The office has had enforcement responsibility for at least twelve (12) consecutive months;

(2) More than ten thousand dollars (\$10,000) in child support is owed and remains unpaid; and

(3) Regular child support payments are not being received.

(b) A referral under subsection (a) of this section shall contain the following information:

(1) An affidavit signed by the custodian of the child receiving court-ordered child support payments stating:

(A) Whether or not anything of value has been received from the person obligated to make the child support payments in lieu of child support payments;

(B) Any known income sources of the person obligated to make the child support payments; and

(C) A request that the criminal offense of nonsupport be prosecuted;

(2) An affidavit from the office detailing the:

(A) Date the child support arrearage began to accrue;

(B) Name of each recipient and the amount of unpaid child support owed to each recipient; and

(C) Last known address of the person obligated to make the child support payments;

(3) A certified copy of the court order and any modifications of the court order mandating payment of child support;

(4) A certified copy of the payment history of the person obligated to make the child support payments; and

(5) A list of possible witnesses and known contact information.

(c) Within thirty (30) days of receiving a referral under this section, the prosecuting attorney will send the office a:

(1) Copy of the criminal information or arrest warrant if a decision to file charges has been made; or

(2) Notice of any deficiencies in the referral.

(d) Nothing in this section limits the ability of the office with respect to a case over which it has enforcement responsibility to:

(1) Refer the case for criminal prosecution if the elements of the crime of nonsupport under § 5-26-401 appear to be present; or

(2) Continue to pursue all available civil remedies in connection with the case.



**History.** Acts 2007, No. 714, § 1.

### **9-14-242. Report of nonsupport payments.**

(a)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall provide individual reports to the county circuit clerk concerning money received by the office in payment of arrearages owed by a person convicted of nonsupport under § 5-26-401.

(2) The reports shall be provided each month.

(b) Upon receipt of the reports from the office, the county circuit clerk shall deduct the amounts stated on the report from the outstanding balance in the circuit clerk's file of the amount of nonsupport restitution owed by the individual.

**History.** Acts 2009, No. 1292, § 1.

## **SUBCHAPTER 3 — REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT**

### **SECTION.**

9-14-301 — 9-14-344. [Repealed.]

### **9-14-301 — 9-14-344. [Repealed.]**

**Publisher's Notes.** This subchapter was repealed by Acts 1993, No. 468, § 8. The subchapter was derived from the following sources:

- |   |                                     |
|---|-------------------------------------|
| 9-14-301. Acts 1969, No. 182, § 1;          | 9-14-313. Acts 1969, No. 182, § 13; |
| A.S.A. 1947, § 34-2401.                     | A.S.A. 1947, § 34-2413.             |
| 9-14-302. Acts 1969, No. 182, § 2;          | 9-14-314. Acts 1969, No. 182, § 14; |
| A.S.A. 1947, § 34-2402.                     | A.S.A. 1947, § 34-2414.             |
| 9-14-303. Acts 1969, No. 182, § 3;          | 9-14-315. Acts 1969, No. 182, § 15; |
| A.S.A. 1947, § 34-2403.                     | A.S.A. 1947, § 34-2415.             |
| 9-14-304. Acts 1969, No. 182, § 4;          | 9-14-316. Acts 1969, No. 182, § 16; |
| A.S.A. 1947, § 34-2404.                     | A.S.A. 1947, § 34-2416.             |
| 9-14-305. Acts 1969, No. 182, § 5;          | 9-14-317. Acts 1969, No. 182, § 17; |
| A.S.A. 1947, § 34-2405.                     | A.S.A. 1947, § 34-2417.             |
| 9-14-306. Acts 1969, No. 182, § 6;          | 9-14-318. Acts 1969, No. 182, § 18; |
| A.S.A. 1947, § 34-2406.                     | A.S.A. 1947, § 34-2418.             |
| 9-14-307. Acts 1969, No. 182, § 7;          | 9-14-319. Acts 1969, No. 182, § 19; |
| A.S.A. 1947, § 34-2407.                     | A.S.A. 1947, § 34-2419.             |
| 9-14-308. Acts 1969, No. 182, § 8;          | 9-14-320. Acts 1969, No. 182, § 20; |
| A.S.A. 1947, § 34-2408.                     | A.S.A. 1947, § 34-2420.             |
| 9-14-309. Acts 1969, No. 182, § 9;          | 9-14-321. Acts 1969, No. 182, § 21; |
| A.S.A. 1947, § 34-2409.                     | A.S.A. 1947, § 34-2421.             |
| 9-14-310. Acts 1969, No. 182, § 10;         | 9-14-322. Acts 1969, No. 182, § 22; |
| 1979, No. 798, § 1; A.S.A. 1947, § 34-2410. | A.S.A. 1947, § 34-2422.             |
| 9-14-311. Acts 1969, No. 182, § 11;         | 9-14-323. Acts 1969, No. 182, § 23; |
| A.S.A. 1947, § 34-2411.                     | A.S.A. 1947, § 34-2423.             |
| 9-14-312. Acts 1969, No. 182, § 12;         | 9-14-324. Acts 1969, No. 182, § 24; |
| A.S.A. 1947, § 34-2412.                     | A.S.A. 1947, § 34-2424.             |
|   | 9-14-325. Acts 1969, No. 182, § 25; |
|   | A.S.A. 1947, § 34-2425.             |
|   | 9-14-326. Acts 1969, No. 182, § 26; |
|   | A.S.A. 1947, § 34-2426.             |
|   | 9-14-327. Acts 1969, No. 182, § 27; |
|   | A.S.A. 1947, § 34-2427.             |

9-14-328. Acts 1969, No. 182, § 28;  
A.S.A. 1947, § 34-2428.  
9-14-329. Acts 1969, No. 182, § 29;  
A.S.A. 1947, § 34-2429.  
9-14-330. Acts 1969, No. 182, § 30;  
A.S.A. 1947, § 34-2430.  
9-14-331. Acts 1969, No. 182, § 31;  
A.S.A. 1947, § 34-2431.  
9-14-332. Acts 1969, No. 182, § 32;  
A.S.A. 1947, § 34-2432.  
9-14-333. Acts 1969, No. 182, § 33;  
A.S.A. 1947, § 34-2433.  
9-14-334. Acts 1969, No. 182, § 34;  
A.S.A. 1947, § 34-2434.  
9-14-335. Acts 1969, No. 182, § 35;  
A.S.A. 1947, § 34-2435.

9-14-336. Acts 1969, No. 182, § 36;  
A.S.A. 1947, § 34-2436.  
9-14-337. Acts 1969, No. 182, § 37;  
A.S.A. 1947, § 34-2437.  
9-14-338. Acts 1969, No. 182, § 38;  
A.S.A. 1947, § 34-2438.  
9-14-339. Acts 1969, No. 182, § 39;  
A.S.A. 1947, § 34-2439.  
9-14-340. Acts 1969, No. 182, § 40;  
A.S.A. 1947, § 34-2440.  
9-14-341. Acts 1969, No. 182, § 41;  
A.S.A. 1947, § 34-2441.  
9-14-342. Acts 1969, No. 182, § 42;  
A.S.A. 1947, § 34-2442.  
9-14-343. Acts 1969, No. 182, § 43.  
9-14-344. Acts 1969, No. 182, § 44.  
For present law, see § 9-17-101 et seq.

## SUBCHAPTER 4 — STATE COMMISSION ON CHILD SUPPORT

### SECTION.

9-14-401. [Repealed.]  
9-14-402. Staff.

### SECTION.

9-14-403. Duties.

**Effective Dates.** Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council

and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

#### 9-14-401. [Repealed.]

**Publisher's Notes.** This section, concerning creation of the State Commission on Child Support, was repealed by Acts 1999, Nos. 1508 and 1514. Acts 1999, No. 1508, § 7(h), repealed the version as amended by Acts 1997, No. 250 and Acts 1999, No. 1514 repealed the version as amended by Acts 1997, No. 1354. Pursuant to § 1-2-207, the amendment by Acts

1999, No. 1508, § 4, of subsection (d) of the version amended by Acts 1997, No. 1354, is deemed superseded by the repeal by Acts 1999, No. 1514. The section was derived from Acts 1989, No. 682, § 1; 1993, No. 1242, § 10; 1995, No. 1184, § 15; 1997, No. 250, § 51; 1997, No. 1354, § 11; 1999, No. 1508, §§ 4, 7(h); 1999, No. 1514, § 19.

#### 9-14-402. Staff.

The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall assign staff of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to assist the State Commission on Child Support [repealed] in carrying out its duties and responsibilities.

**History.** Acts 1989, No. 682, § 1; 1995, No. 1184, § 16.

**Publisher's Notes.** As to the repeal of

the State Commission on Child Support [repealed], referred to in this section, see the Publisher's Note to § 9-14-401.

#### 9-14-403. Duties.

The State Commission on Child Support [repealed] shall have the following duties:

(1) To examine, investigate, and study the operation of the state's child support system to determine the extent to which such system is successful in securing support and parental involvement for children;

(2) To make recommendations for legislation which would clarify and improve state laws in the areas of visitation, standards for support, enforcement of interstate obligations, paternity establishment, and support collection methods;

(3) To evaluate the availability, cost, and effectiveness of services for support enforcement to children receiving aid and those not receiving aid and assist the Title IV-D agency in program improvements or



enhancements which would increase the availability of support enforcement;

(4) To examine proposed legislation and make recommendations concerning compliance with federal requirements for support collection; and

(5) To review expedited process reporting for child support cases pending in the judicial districts from data furnished by the Administrative Office of the Courts and assist in compliance with case processing standards.

**History.** Acts 1989, No. 682, § 1.

**Publisher's Notes.** The reference to "Title IV-D agency" in (3) probably refers to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

As to the repeal of the State Commis-

sion on Child Support [repealed], referred to in this section, see the Publisher's Note to § 9-14-401.

**U.S. Code.** Title IV-D, referred to in this section, refers to Title IV-D of the Social Security Act, which is codified as 42 U.S.C. § 651 et seq.

## SUBCHAPTER 5 — HEALTH CARE COVERAGE

### SECTION.

9-14-501. Definition.

9-14-502. Income withholding authorized.

9-14-503. Minor children — Certain provisions denying or restricting coverage void.

9-14-504. Communication with custodial parent or assignee.

9-14-505. No direct offset to child support.

9-14-506. Effective date of income withholding order — Applicability.

9-14-507. Priority of income withholding claims.

9-14-508. Persons subject to income with-

### SECTION.

holding — Ground for contest.

9-14-509. Notice to noncustodial parent.

9-14-510. Determination of contest.

9-14-511. Notice to employer.

9-14-512. Objection of employer.

9-14-513. Employer bound by court order until further notice.

9-14-514. Notification of court by employer of termination.

9-14-515. Employer prohibited from taking action against parent for income withholding.

9-14-516. Enforcing medical support in Title IV-D cases.

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**Effective Dates.** Acts 1991, No. 368, § 18: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and medical insurance requirements be enforced in the most expedient manner for all children of this state; that the smooth transition from current requirements to those of this act require that the provisions become effective upon passage. Therefore, an emergency is hereby declared to exist and this act being

necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1179, § 9: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that Arkansas law governing health care coverage for minor children does not conform with current federal requirements set forth in Section 13623 of the Omnibus Budget Reconciliation Act of 1993; that it is in the best interests of the people of the state of

Arkansas that the provisions of this act be given immediate effect so that federal funding is not jeopardized and that minor children entitled to health care services be able to receive those services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among

others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

#### 9-14-501. Definition.

As used in this subchapter, "health care coverage" includes, but need not be limited to, insurance of human beings against bodily injury, disability, or death by accident or accidental means, or the expense thereof, or disablement or expense resulting from sickness, and every insurance appertaining thereto.

**History.** Acts 1991, No. 368, § 2.

#### 9-14-502. Income withholding authorized.

(a) In all decrees and orders that direct the noncustodial parent to provide and maintain health care coverage for any child, the court shall include a provision directing the employer to deduct from money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to provide for premiums for health care coverage offered by the employer.

(b)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to garnish wages, salary, or other employment income pursuant to § 16-110-101 et seq. and withhold amounts from a state tax refund due any person who:

(A) Is required by a court or administrative order to provide coverage for costs of health services to a child who is eligible for medical assistance under this section; and

(B)(i) Has received payment from a third party for the costs of such services for the child; but

(ii) Has not used such payment to reimburse, as appropriate, the custodial parent, the provider of such services, the Department of Human Services, or the office for expenditures for such costs.

(2) Any claims for current or past-due child support shall have priority over any claim for the costs of such services.

**History.** Acts 1991, No. 368, § 1; 1995, No. 1179, § 1.

### **9-14-503. Minor children — Certain provisions denying or restricting coverage void.**

(a)(1) No contract of individual or group health care coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall, directly or indirectly, restrict or deny health care coverage due to the fact that the minor child does not reside with the noncustodial parent or that the parent-child relationship was established through a paternity action or that the minor child is covered through the state-administered medicaid program or that the minor child is not claimed as a dependent on the noncustodial parent's federal or state income tax return.

(2)(A) Furthermore, no insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall, directly or indirectly, restrict or deny benefits to a minor child because the child lives outside of its service area.

(B) Benefits provided outside the service area shall be in accordance with the terms and conditions of the health care plan.

(b)(1) Each contract of individual or group health care coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall provide for the immediate enrollment of the minor child or children.

(2) The minor child shall be enrolled immediately in the noncustodial parent's health care plan upon submission of the notice as provided in § 9-14-511 or, in cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as required in § 9-14-516.

(c) Except for nonpayment of premium, no contract of individual or group health care coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall permit, directly



or indirectly, the removal of a minor child from enrollment for coverage unless the insurer has received evidence in writing that the court or administrative order providing for the health care coverage is no longer in effect or that the child is or will be enrolled on comparable health coverage through another insurer that will take effect not later than the effective date of such disenrollment.

(d) No contract of individual or group health care coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall, directly or indirectly, impose requirements on the office that are any different from those applicable to any other agent or assignee assigned the rights of a person eligible for medical assistance under this section and covered for health benefits from the insurer.

(e) Any insurance policy provision that would deny or restrict coverage to a minor child under such circumstances shall be void as against public policy.

**History.** Acts 1991, No. 368, § 3; 1993, No. 1242, § 14; 1995, No. 1179, § 2; 2003, No. 1020, § 9.

ified as § 9-14-503(d) and (e), is also codified as § 23-79-144.

**Publisher's Notes.** The same language from Acts 1991, No. 368, § 3, codi-

Acts 1995, No. 1179 § 2, is also codified, in part, as § 23-79-144(a).

### **9-14-504. Communication with custodial parent or assignee.**

(a) Without regard to the fact that coverage may be provided through a policy benefiting the noncustodial parent of a child or children, any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation operating in this state shall:

(1) Receive claims for payment;

(2) Respond to requests concerning information necessary to determine coverage status, claims status, health policy plan, or benefits for minor children for whom services are provided under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et. seq., regardless of the identity of the policyholder if the policy covers the child or to obtain benefits through coverage for minor children; and

(3) Communicate with:

(A) The custodial parent or parents or the noncustodial parent or parents of the minor child or children;

(B) An assignee; or

(C) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(b) Any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation operating in this state shall permit the custodial parent or the provider, with approval of the custodial parent, to submit claims for covered services without approval of the noncustodial parent and shall

make payment on such claims directly to the custodial parent, the provider, or the office.

**History.** Acts 1991, No. 368, § 3; 1995, No. 1179, § 3; 2005, No. 506, § 1; 2009, No. 551, § 5.

**Amendments.** The 2005 amendment inserted the subdivision (1)-(3) designations in (a) and made minor stylistic and related changes; and inserted “claims sta-

tus, health policy plan, or benefits” in present (a)(2).

The 2009 amendment inserted “for whom services are provided under Title IV-D of the Social Security Act regardless of the identity of the policyholder if the policy covers the child” in (a)(2).

### **9-14-505. No direct offset to child support.**

(a) Health care coverage premiums shall not be deemed or used as a direct offset to the child support award.

(b) However, premiums for health care for a minor child can be considered in determining net take-home pay of the noncustodial parent when setting the current child support award.

**History.** Acts 1991, No. 368, § 6.

### **9-14-506. Effective date of income withholding order — Applicability.**

(a)(1) An order of income withholding for health care coverage shall take effect immediately upon completion of enrollment requirements or, in cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as required in § 9-14-516.

(2) Enrollment requirements shall be completed at the earliest enrollment period or, in cases being enforced under Title IV-D, 42 U.S.C. § 651 et. seq., by the office, as required in § 9-14-516.

(3) Enrollment information shall be provided by the custodial parent, noncustodial parent, or the office as available.

(b) Income withholding for health care coverage shall apply to current and subsequent periods of employment once activated.

**History.** Acts 1991, No. 368, §§ 4, 7; 2003, No. 1020, § 10.

### **9-14-507. Priority of income withholding claims.**

An order of income withholding for health care coverage shall have priority over all other legal processes under state law against money, income, or periodic earnings of the noncustodial parent except an order of income withholding for child support.

**History.** Acts 1991, No. 368, § 5.

**9-14-508. Persons subject to income withholding — Ground for contest.**

(a) Any person under a court order to provide and maintain health care coverage as of March 6, 1991, shall be subject to income withholding for health care coverage provisions of this subchapter.

(b) An order of income withholding for health care coverage shall become effective upon the completion of the notice requirement set forth in § 9-14-509.

(c)(1) The fact that the custodial parent provides supplemental medical insurance coverage or that the minor child or children are otherwise eligible for medicaid assistance shall not be a ground to contest an order of income withholding for health care coverage.

(2) The only ground to contest an order of income withholding for health care coverage shall be mistake of fact.

(d) The noncustodial parent shall not eliminate health care coverage for the minor child or children without receiving evidence in writing that the court or administrative order providing for the health care coverage is no longer in effect.

(e) Whenever the court orders the noncustodial parent to provide health care coverage and the noncustodial parent fails or refuses to comply or eliminates health care coverage in violation of subsection (d) of this section, that fact shall be disclosed to the court and may be considered a ground for civil or criminal contempt of court.

(f) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

**History.** Acts 1991, No. 368, § 8; 1995, No. 1179, § 4; 2003, No. 1020, § 11.

**9-14-509. Notice to noncustodial parent.**

(a) Prior to notification to the employer, the noncustodial parent shall be sent a notice by any form of mail addressed to the parent at his or her last known address as contained in the records of the court clerk.

(b) The information contained in the notice shall include:

(1) That the parent has been directed to provide and maintain health care coverage for the benefit of a minor child;

(2) The name and date of birth of the minor child or children;

(3) That the income withholding for health care coverage applies to current and subsequent periods of employment;

(4) The procedure available to contest the withholding on the ground that the withholding is not proper because of mistake of fact;

(5) That failure to contest the withholding within fifteen (15) days of the mail date of the notice will result in the payor's being notified to begin the enrollment requirements and withholding;

(6) That, if the noncustodial parent contests the withholding, he or she will be afforded an opportunity to present his or her case to the



court or its representative in that jurisdiction within thirty (30) days of receipt of the notice of contest; and

(7) That state law prohibits employers from retaliating against a noncustodial parent under an income withholding order for health care coverage and that the court or its representative should be contacted if the noncustodial parent has been retaliated against by his or her employer as a result of the income withholding for health care coverage.

(c) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

**History.** Acts 1991, No. 368, § 9; 2003, No. 1020, § 12.

### **9-14-510. Determination of contest.**

(a) Should the noncustodial parent contest the withholding because of mistake of fact, then, after providing the noncustodial parent an opportunity to present his or her case, the court or its representative shall determine whether the withholding shall occur and shall notify the noncustodial parent of the determination and, if appropriate, the time period in which withholding will commence.

(b) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

**History.** Acts 1991, No. 368, § 10; 2003, No. 1020, § 13.

### **9-14-511. Notice to employer.**

(a) Notice shall be sent to the employer or payor of the parent for whom income withholding for health care coverage has been ordered.

(b) The notice may be served on the employer or payor as if it were a summons pursuant to Rule 4 of the Arkansas Rules of Civil Procedure or may be sent to the employer by any form of mail requiring a signed receipt.

(c) The notice shall contain the following information:

- (1) The parent's name and social security number;
- (2) That the parent has been required to provide and maintain health care coverage for a dependent minor child;
- (3) The name, date of birth, and social security number for each child;
- (4) That the employer should complete the enrollment requirements with the assistance of the custodial parent, noncustodial parent, employee, or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and begin withholding funds sufficient from the earnings due the parent to cover

premiums for placing the minor child on the parent's health care coverage as provided by the employer and pay such funds so withheld to the insurer;

(5) That withholding is binding on the payor for current and subsequent periods of employment or until further notice by the court or its representative;

(6) That the payor must notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source or health care coverage and shall provide the noncustodial parent's last known address and the name and address of any new employer or new health care coverage provider, if known, or both;

(7) That the employer must implement health care coverage for the minor child immediately upon receipt of the notice without regard to any enrollment season restrictions; and

(8) That the employer must not remove a minor child from enrollment for coverage unless:

(A) The employer has received evidence in writing that the court or administrative order is no longer in effect;

(B) The child is or will be enrolled in comparable health coverage by the noncustodial parent that will take effect not later than the effective date of the disenrollment; or

(C) The employer has eliminated family health coverage for all of its employees.

(d) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the office, § 9-14-516 shall apply.

**History.** Acts 1991, No. 368, § 11;  
1995, No. 1179, § 5; 2003, No. 1020, § 14.

### **9-14-512. Objection of employer.**

(a) Upon receipt of an objection from a payor under an order of income withholding for health care coverage, the court or its representative shall expeditiously determine whether the payor shall be relieved under the order and shall so inform the payor within ten (10) days of receipt of the objection by a notice of its determination sent to the payor by regular mail.

(b) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

**History.** Acts 1991, No. 368, § 12;  
2003, No. 1020, § 15.

**9-14-513. Employer bound by court order until further notice.**

A payor who has been notified of an order of income withholding for health care coverage shall be bound by the order until further notice by the court or its representative.

**History.** Acts 1991, No. 368, § 13.

**9-14-514. Notification of court by employer of termination.**

A payor shall notify the court or its representative or, in cases enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known.

**History.** Acts 1991, No. 368, § 13;  
2003, No. 1020, § 16.

**9-14-515. Employer prohibited from taking action against parent for income withholding.**

(a) A payor who is an employer is prohibited from discharging, refusing to employ, or taking other disciplinary action against a noncustodial parent under an income withholding order for health care coverage.

(b) Any employer violating this subchapter shall be subject to the contempt powers of the court issuing the order and may be fined up to fifty dollars (\$50.00) per day.

(c) The noncustodial parent shall have the burden to prove that income withholding for health care coverage was the sole reason for the employer's action.

**History.** Acts 1991, No. 368, § 14.

**9-14-516. Enforcing medical support in Title IV-D cases.**

(a) In all cases in which either parent is ordered to provide medical support and the court order is enforced by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., the office shall utilize the National Medical Support Notice in compliance with federal regulations 45 C.F.R. § 303.32 and 29 C.F.R. § 2590 as they existed on March 27, 2001.

(b) Unless the court or administrative order stipulates alternative coverage, the office shall send the National Medical Support Notice to the employer or payor within two (2) business days of receiving



employment information or matching with employer information contained in the New Hire Directory.

(c) Immediately upon receipt of the National Medical Support Notice, the employer or payor shall deduct from wages or other income an amount sufficient to cover the cost of the health care premiums and shall forward that amount to the health care plan administrator.

(d)(1) The Consumer Credit Protection Act, 15 U.S.C. § 1671 — 1677, limits shall apply to the combined total withheld for both child support and medical coverage.

(2) Income withholding for child support shall take priority over the deduction for health care premiums.

(e) The employer or payor shall transmit the National Medical Support Notice to the health care plan administrator no later than twenty (20) business days after the date of the notice.

(f)(1) The health care plan administrator shall complete the enrollment requirements for the child and notify the parents and the child, if the child resides at an address other than the address of the custodial parent, that coverage is or will become available.

(2) The health plan administrator shall also furnish the custodial parent, within forty (40) business days after the posting date of the National Medical Support Notice, the following:

(A) A description of the coverage;

(B) The effective date of the coverage; and

(C) Any forms or documents necessary to effectuate the coverage.

(g) The office, in consultation with the custodial parent, shall promptly select from available plan options when the plan administrator reports that there is more than one (1) option available under the plan.

(h)(1)(A) The obligor may contest the income withholding for health care premiums based on a mistake of fact by objecting, within twenty (20) days after receipt of the notice, to the court or its representative.

(B) Notice of the objection shall be provided to the office.

(2) In order for the child to be enrolled in the health plan while the matter is being reviewed, the employer shall:

(A) Implement withholding immediately; and

(B) Forward the National Medical Support Notice to the health plan administrator.

(i) The employer shall notify the office promptly when the employment of the obligor is terminated and provide the office:

(1) The obligor's last known address; and

(2) The name and address of the obligor's employer, if known.

(j) The office shall notify the employer when there is no longer a current order for medical support in effect for which the Title IV-D agency is responsible.

**History.** Acts 2003, No. 1020, § 17.

**Publisher's Notes.** The National Medical Support Notice is a standard form

the federal government has designed for the use of states in child support cases.

**U.S. Code.** Title IV-D, referred to in

this section, refers to Title IV-D of the Social Security Act, which is codified as 42 U.S.C. § 651 et. seq.

## SUBCHAPTERS 6-7

[Reserved]

### SUBCHAPTER 8 — CENTRALIZED CLEARINGHOUSE

#### SECTION.

- 9-14-801. Definitions and capabilities.
- 9-14-802. Authority.
- 9-14-803. Data.
- 9-14-804. Payments — Effect.
- 9-14-805. Permanent transfer.
- 9-14-806. Electronic funds transfer and electronic data informa-

#### SECTION.

- tion election — Arkansas Child Support Tracking System.
- 9-14-807. Official payment record.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, the repeal of former § 9-14-806 by Acts 1995, No. 1344 superseded its amendment by Acts 1995, No. 1184.

**Publisher's Notes.** Former subchapter 8, concerning a centralized clearinghouse for child support payments, was repealed by implication by Acts 1995, No. 1344. The former subchapter was derived from:

- 9-14-801. Acts 1989, No. 686, § 1.
- 9-14-802. Acts 1989, No. 686, § 2; 1993, No. 1242, § 15.
- 9-14-803. Acts 1989, No. 686, § 3.
- 9-14-804. Acts 1989, No. 686, § 4.
- 9-14-805. Acts 1989, No. 686, § 5.
- 9-14-806. Acts 1989, No. 686, § 6; 1995, No. 1184, § 17.

**Effective Dates.** Acts 1995, No. 1344, § 11: Apr. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected, enforced, and distributed in the most expedient manner for all children of this state; that smooth transition from current requirements to those of this act require that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from after its passage and approval."

#### 9-14-801. Definitions and capabilities.

As used in this subchapter:

(1) "ACTS" means the Arkansas Child Support Tracking System, a statewide computerized child support payment and data tracking and scheduling system;

(2)(A) "Clearinghouse" means an automated child support payment processing system operating under the auspices of the office, capable of providing electronic funds transfer and electronic data interchange transactions for all Title IV-D child support cases on a statewide basis.

(B) The clearinghouse shall be capable of pro rata distribution of child support payments on multiple cases involving the same non-

custodial parent, and different custodial parents, through income withholding.

(C) The clearinghouse shall be capable of processing automated assignments of child support payments in accordance with state and federal laws and regulations.

(D) The clearinghouse shall be capable of performing electronic funds transfer and electronic data interchange transactions;

(3) "EFT/EDI" means electronic funds transfer and electronic data interchange;

(4) "Office" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration; and

(5) "Title IV-D" means Title IV-D of the federal Social Security Act, as amended.

**History.** Acts 1995, No. 1344, § 1. Security Act, referred to in this section, is  
**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is  
codified as 42 U.S.C. § 651 et seq.

### 9-14-802. Authority.

The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to implement a clearinghouse system with electronic funds transfer and electronic data interchange transaction capabilities for the collection and distribution of child support payments in all cases brought pursuant to Title IV-D of the Social Security Act and cases assigned to the clearinghouse as provided in this subchapter.

**History.** Acts 1995, No. 1344, § 2. Security Act, referred to in this section, is  
**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is  
codified as 42 U.S.C. § 651 et seq.

### 9-14-803. Data.

(a) The clerk of the court shall provide to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration information on all child support payments paid through the registry of the court concerning the categories of cases listed in subsection (b) of this section, including, but not limited to, the name, address, social security number, and employer of the plaintiff and defendant when available to the clerk through the court records.

(b)(1) All child support payments owed in the below-listed cases shall be paid through the clearinghouse.

(2) The clerk of the court shall provide the payment records of the below-listed cases to the office within five (5) working days following receipt of written notice by the office of one (1) of the listed contingencies:

(A) When there is a current assignment of rights pursuant to § 9-14-109, § 20-77-109, or § 20-77-307 to the office by the custodial parent, and in cases where the custodial parents execute an application for Title IV-D services;



(B) In monitoring cases pursuant to 45 C.F.R. § 302.57, and in cases in which a party to the case requests that payments be made through the clearinghouse;

(C) In cases in which there are arrearages owed to the custodial parent and arrearages owed to the state pursuant to an assignment as set out in § 9-14-109, § 20-77-109, or § 20-77-307, and the clerk of the court is unable to split the child support payment between the custodial parent and the state;

(D) In all Title IV-D cases, or in multiple cases involving the Title IV-D office, in which income withholding is ordered and the obligated parent has more than one (1) child support case and the clerk of the court is unable to split the child support payment between the obligated parent's cases on a pro rata basis as required by state and federal laws and regulations.

(c) Upon receipt of an assignment or notice from the office that a case is transferred to the clearinghouse, the clerk of the court shall enter all case data into the Arkansas Child Support Tracking System, the system to be provided to the clerk of the court by the office.

(d) Any child support payment records provided by the clerk of the court pursuant to this section to the office shall be attested to and certified by the clerk of the court in writing as the true and accurate payment record of the noncustodial parent.

**History.** Acts 1995, No. 1344, § 3; 1997, No. 1296, § 35.

**A.C.R.C. Notes.** The reference to Office of Child Support Enforcement in this section may be referenced to the Office of

Child Support Enforcement of the Revenue Division of the Department of Finance and Administration established at § 9-14-206.

### **9-14-804. Payments — Effect.**

(a)(1)(A) All child support payments made on cases brought pursuant to Title IV-D shall be paid through the clearinghouse to be operated under the auspices of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(B) Alimony payments may be paid through the clearinghouse if an order to pay child support is included in the order of alimony.

(C) Support payments under § 9-14-803(b) and any other payments required by court order to be made through the registry of the court or through the clerk of the court shall be made to the clearinghouse.

(2) The Office of Child Support Enforcement shall seek the assistance of the Administrative Office of the Courts for the purposes of securing standing orders when required to facilitate payment transition.

(b)(1) All orders directing payments through the clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no

children remain minor, the child support obligation is extinguished, and any arrears are completely satisfied.

(2) If the court sets an annual fee or a pro rata amount representing the portion of the fee due for the remainder of the calendar year, it shall be collected from the noncustodial parent or obligated spouse at the time of the first payment, and a thirty-six dollar (\$36.00) fee shall be collected in January of each year thereafter until no children remain minor and the support obligation is extinguished.

(3) The Office of Child Support Enforcement shall have all rights and responsibilities of the clerk of the court, including, but not limited to, those rights and responsibilities set out in §§ 9-10-109 and 9-12-312.

(c) In all cases transferred to the clearinghouse by the clerk of the court, the fee paid by the noncustodial parent pursuant to §§ 9-10-109 and 9-12-312 paid subsequent to the transfer of the case shall be paid to the clearinghouse.

**History.** Acts 1995, No. 1344, § 4; 1997, No. 1296, § 36; 1999, No. 1514, § 20.

**A.C.R.C. Notes.** As enacted by Acts 1995, No. 1344, subdivision (a)(1) began: "Effective October 1, 1995,"

As enacted by Acts 1995, No. 1344, subdivision (a)(1)(C) provided that the

payments shall, "effective October 1, 1995," be made to the clearinghouse.

As enacted by Acts 1995, No. 1344, subdivision (c)(1) began: "Effective January 1, 1996."

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

### **9-14-805. Permanent transfer.**

(a)(1) A Title IV-D child support, paternity, or medicaid-only case shall remain within the clearinghouse for payment, collection, and distribution purposes even though a custodial parent may elect to close the case with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration in regard to establishment and enforcement services.

(2) The cases shall be referred to as non-Title IV-D clearinghouse cases.

(b) In the event a child support case begins paying through the clearinghouse, all payments shall continue to be paid through the clearinghouse for the life of the case.

(c)(1) Effective October 1, 1998, by operation of law, all cases that are enforced by the state in which the support order was initially issued on or after January 1, 1994, and in which income of the noncustodial parent is subject to withholding, shall be paid through the clearinghouse.

(2) All child support cases once paid through the clearinghouse, Title IV-D and non-Title IV-D clearinghouse cases, shall continue to be paid through the clearinghouse in accordance with this section.

(3) All other child support payments currently being paid through the registry of the circuit court shall continue to be paid through the registry:

(A) Until October 1, 1999, at which time all child support payments made through income withholding shall, by operation of law, be redirected and paid through the clearinghouse;

(B) Until an assignment of child support to the office is made in a case; or

(C) Until such time as the office and the clerk of the court agree that child support payments may be redirected to and paid through the clearinghouse prior to September 30, 1999, but any such agreement shall not be effective until October 1, 1998.

(4) For all child support cases with income withholding that are redirected to and paid through the clearinghouse in accordance with subdivisions (c)(1) and (2) of this section, the clerk of the court shall enter into the Arkansas Child Support Data Tracking System or shall supply by first class mail on an approved form any and all information required by the office sufficient to process child support payments.

**History.** Acts 1995, No. 1344, § 5;  
1997, No. 1296, § 37.

#### **9-14-806. Electronic funds transfer and electronic data information election — Arkansas Child Support Tracking System.**

(a) Employers may remit income withholding for child support by electronic funds transfer and electronic data interchange transaction.

(b) Unless otherwise notified by the Title IV-D agency, all child support payments paid by income withholding and remitted via electronic funds transfer and electronic data interchange transactions shall be sent to the circuit clerk.

(c) The Title IV-D agency shall notify the employer when a case is assigned or transferred to the clearinghouse, at which time the employer shall begin or continue income withholding for child support and may remit such payments to the clearinghouse by electronic funds transfer and electronic data interchange transactions.

(d)(1) The circuit clerk is authorized to use the Arkansas Child Support Data Tracking System for all private cases, including alimony, in which there is an order to pay child support, without charge until January 1, 1996.

(2) After January 1, 1996, if the circuit clerk elects to use the system, the clerk may contract with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to pay for the costs of the use and operational expenses of the system.

**History.** Acts 1995, No. 1344, § 6.

#### **9-14-807. Official payment record.**

(a) In all cases mentioned in this subchapter wherein the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is charged with collection and distribu-



tion of child support, the payment records of the office shall constitute an official public record subject to the self-authentication provision of the Arkansas Rules of Evidence.

(b)(1) The child support payment record issued by the Office of Child Support Enforcement and certified by an affidavit duly subscribed and sworn to before a notary public may be introduced in evidence in child support actions without calling an agent or employee of the office as a witness.

(2) A copy of a child support payment record will be accessible in the clerk's office through the Arkansas Child Support Data Tracking System, and the clerk may make the record available to officers of the court, judges, attorneys, and abstractors.

(c)(1)(A) The Office of Child Support Enforcement shall furnish the child support payment record, duly certified as set out in subsection (b) of this section, to a noncustodial parent or custodial parent in his or her child support case or cases, or to the attorney of record of the noncustodial or custodial parent, or to whomever the noncustodial parent, custodial parent, or his or her attorney of record directs, upon written request.

(B) The request shall state the name of the noncustodial parent and custodial parent, the court docket number, and the Title IV-D numbers, when available.

(2) The Office of Child Support Enforcement may also furnish a certified child support payment record, as set out in subsection (b) of this section, to officers of the court and judges and for the purpose of facilitating the satisfaction of a judgment for child support, to abstractors and attorneys.

**History.** Acts 1995, No. 1344, § 7; 2003, No. 1020, § 18; 2003, No. 1177, § 1.

**A.C.R.C. Notes.** As enacted by Acts 1995, No. 1344, § 7, subsection (a) began:

"Effective October 1, 1995,"

**U.S. Code.** Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Support Pay-

ment Records, 26 U. Ark. Little Rock L. Rev. 414.

# CHAPTER 15

## DOMESTIC ABUSE ACT

### SUBCHAPTER

1. GENERAL PROVISIONS.
2. JUDICIAL PROCEEDINGS.
3. OUT-OF-STATE ORDERS OF PROTECTION.
4. SPOUSAL ABUSE SAFETY PLAN ACT.

**A.C.R.C. Notes.** Former chapter 15, concerning domestic abuse, was held unconstitutional in *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990) and is deemed to be superseded by Acts 1991, No. 266. The former sections were derived from the following sources:

- 9-15-101. Acts 1989, No. 636, § 1.
- 9-15-102. Acts 1989, No. 636, § 2.
- 9-15-103. Acts 1989, No. 636, § 3.
- 9-15-104. Acts 1989, No. 636, §§ 4, 5.
- 9-15-105. Acts 1989, No. 636, § 6.
- 9-15-201. Acts 1989, No. 636, § 4.
- 9-15-202. Acts 1989, No. 636, § 4.
- 9-15-203. Acts 1989, No. 636, § 4.
- 9-15-204. Acts 1989, No. 636, § 4.
- 9-15-205. Acts 1989, No. 636, § 4.
- 9-15-206. Acts 1989, No. 636, § 4.
- 9-15-207. Acts 1989, No. 636, § 4.
- 9-15-208. Acts 1989, No. 636, § 4.
- 9-15-209. Acts 1989, No. 636, § 4.
- 9-15-210. Acts 1989, No. 636, § 5.
- 9-15-211. Acts 1989, No. 636, § 5.

References to "this chapter" in subchapters 1 and 2 may not apply to § 9-15-202 or subchapter 3 which were enacted subsequently.

**Cross References.** Use of deadly force as defense against domestic abuse, § 5-2-607.

**Effective Dates.** Acts 1991, No. 266, § 17: Feb. 28, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that since the recent court decision in *Bates v. Bates*, this state has lacked adequate remedies for dealing with domestic violence and abuse; that the problem of domestic violence and abuse in our society is so complex that proper judicial remedies for victims and potential victims transcend the traditional jurisdictions of circuit and municipal court; that every potential remedy should be made available to members of households who have been subjected to abuse or are likely to be subjected to abuse such as to provide for the issuance of a protective order. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force upon its passage and approval."

## RESEARCH REFERENCES

**A.L.R.** Battered woman syndrome, standard for determination of reasonableness of criminal defendant's belief, for purposes of self defense claim, that physical force is necessary — modern cases. 73 A.L.R.4th 993.

Ineffective assistance of counsel, battered spouse syndrome as a defense to homicide or other criminal offense. 11 A.L.R.5th 871.

Admissibility of evidence of prior physical acts of spousal abuse committed by defendant accused of murdering spouse or former spouse. 24 A.L.R.5th 465.

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children. 51 A.L.R.5th 241.

Admissibility of expert or opinion evidence of battered-woman syndrome on issue of self-defense. 57 A.L.R.5th 315; 58 A.L.R.5th 749.

Duty to retreat where assailant and assailed share same living quarters. 67 A.L.R.5th 637.

**Am. Jur.** 24 Am. Jur. 2d, Divorce & S., §§ 43, 45, 46, 56-58, 106, 132, 178, 179.

**Ark. L. Rev.** Killenbeck, Nothing That We Can Do? Or, Much Ado About Nothing? Some Thoughts on *Bates v. Bates*, Equity, and Domestic Abuse in Arkansas, 43 Ark. L. Rev. 732.

Killenbeck, And Then They Did .... ? Abusing Equity in the Name of Justice, 44 Ark. L. Rev. 235.

**C.J.S.** 17 C.J.S., Contempt, § 41.  
28 C.J.S., Dom Abuse, § 1 et seq.

**U. Ark. Little Rock L.J.** Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

Notes, Constitutional Law — The Domestic Abuse Act of 1989 — An Impermissible Expansion of Chancery Jurisdiction. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990), 13 U. Ark. Little Rock L.J. 537.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Purpose.

**Constitutionality.**

The 1989 version of this chapter created a new cause of action and unconstitutionally placed jurisdiction of the new cause of action in the chancery court. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

Because the remedy provided at law was adequate, one of the conditions necessary for equity to act to protect personal and property rights had not been met, and the chancellor correctly held that the 1989 Domestic Abuse Act impermissibly enlarged chancery court jurisdiction. *Bates*

*v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

Acts 1989, No. 636 did not contain a severability clause, and when an act does not contain a severability clause, and the various parts of the act are so interdependent that it cannot be presumed the general assembly would have enacted one section without the other, the whole act must fail. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

**Purpose.**

The quintessence of the cause of action provided by the 1989 version of this chapter was preventing a person from committing acts of domestic abuse. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

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## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

9-15-101. Purpose.  
9-15-102. Title.

## SECTION.

9-15-103. Definitions.

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## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey —  
Family Law, 14 U. Ark. Little Rock L.J.  
799.

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### 9-15-101. Purpose.

The purpose of this chapter is to provide an adequate mechanism whereby the State of Arkansas can protect the general health, welfare, and safety of its citizens by intervening when abuse of a member of a household by another member of a household occurs or is threatened to occur, thus preventing further violence. The General Assembly has assessed domestic abuse in Arkansas and believes that the relief contemplated under this chapter is injunctive and therefore equitable in nature. The General Assembly hereby finds that this chapter is necessary to secure important governmental interests in the protection of victims of abuse and the prevention of further abuse through the removal of offenders from the household and other injunctive relief for which there is no adequate remedy in current law. The General Assembly hereby finds that this chapter shall meet a compelling



societal need and is necessary to correct the acute and pervasive problem of violence and abuse within households in this state. The equitable nature of this remedy requires the legislature to place proceedings contemplated by this chapter under the jurisdiction of the circuit courts.

**History.** Acts 1991, No. 266, § 1.

### CASE NOTES

#### **Applicability.**

Circuit court did not misapply the state's Domestic Abuse Act by dismissing wife's petition for an order of protection because a mutual restraining order had been entered in the parties' divorce case. *Davis v. Davis*, 360 Ark. 233, 200 S.W.3d 886 (2005).

Pursuant to the Arkansas Domestic Abuse Act, a court erred in granting a mother's petition for an order of protection against appellant where the only allegations that were proven were that appellant had continued to see the mother's

16-year-old daughter after the mother prohibited contact between them and that appellant had purchased the morning-after pill for the daughter; the mere fact that the parents did not like appellant was not a proper ground upon which to issue an order of protection in the absence of evidence of actual physical harm or the fear of imminent physical harm. *Claver v. Wilbur*, 102 Ark. App. 53, 280 S.W.3d 570 (2008).

**Cited:** *Lowry v. State*, 90 Ark. App. 333, 205 S.W.3d 830 (2005).

#### **9-15-102. Title.**

This chapter shall be known and may be cited as the "Domestic Abuse Act of 1991".

**History.** Acts 1991, No. 266, § 11.

#### **9-15-103. Definitions.**

As used in this chapter:

(1) "County where the petitioner resides" means the county in which the petitioner physically resides at the time the petition is filed and may include a county where the petitioner is located for a short-term stay in a domestic violence shelter;

(2)(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals that shall be determined by examining the following factors:

- (i) The length of the relationship;
- (ii) The type of the relationship; and
- (iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" shall not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context;

(3) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state; and

(4) “Family or household members” means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together.

**History.** Acts 1991, No. 266, § 2; 1999, No. 1551, § 1; 2001, No. 1678, § 1; 2005, No. 1676, § 1; 2005, No. 1875, § 1; 2009, No. 698, § 1.

**A.C.R.C. Notes.** Acts 2001, No. 1678, § 1, did not accurately engross the amendments to this section. Certain language was inadvertently deleted during the amendment process and added back by the Arkansas Code Revision Commission pursuant to a review.

**Amendments.** The 2005 amendment by No. 1676 inserted present (a) [now (1)]; and redesignated former (a) and (b) as present (b) and (c) [now (2) and (3)].

The 2005 amendment by No. 1875 inserted “As used in this chapter” at the beginning; redesignated former (a), (a)(1),

(a)(2), and (b) as present (2), (2)(A), (2)(B), and (3); respectively; in present (3), inserted “and persons who are presently or in the past have been in a dating relationship together” and made related changes; and added (4).

The 2009 amendment made no change in this section.

**Cross References.** First degree assault on family or household member, § 5-26-307.

Petition form for orders of protection, § 9-15-203.

Use of deadly force as defense against domestic abuse, § 5-2-607.

Warrantless arrest for domestic abuse, § 16-81-113.

## CASE NOTES

### ANALYSIS

Evidence.

Imminent.

### Evidence.

Order of protection entered against defendant was reversed as the evidence was insufficient to find that defendant had inflicted physical harm, bodily injury, assault, or fear of imminent physical harm, bodily injury, or assault, as required by this section. *Newton v. Tidd*, 94 Ark. App. 368, 231 S.W.3d 84 (2006).

Trial court could have reasonably found that appellant committed domestic abuse by inflicting fear of imminent physical harm, bodily injury, or assault where appellee testified that he grabbed her, screamed obscenities in her face, and burst a beer bottle behind her at a party, causing her to fear for her safety. *Pablo v. Crowder*, 95 Ark. App. 268, 236 S.W.3d 559 (2006).

Pursuant to the Arkansas Domestic Abuse Act, subdivisions (3) and (4) of this section, a court erred in granting a mother’s petition for an order of protection against appellant where the only allegations that were proven were that appellant had continued to see the mother’s 16-year-old daughter after the mother prohibited contact between them and that appellant had purchased the morning-after pill for the daughter; the mere fact that the parents did not like appellant was not a proper ground upon which to issue an order of protection in the absence of evidence of actual physical harm or the fear of imminent physical harm. *Claver v. Wilbur*, 102 Ark. App. 53, 280 S.W.3d 570 (2008).

### Imminent.

“Imminent” means “likely to occur at any moment” or “impending” at the time of the alleged abuse, not at the time of filing the petition for a protective order;

therefore, an order of protection was properly granted where the girlfriend was in fear of imminent harm based on threatening text messages sent by her boyfriend

four months prior to the filing of the order of protection. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

## SUBCHAPTER 2 — JUDICIAL PROCEEDINGS

### SECTION.

- 9-15-201. Petition — Requirements generally.
- 9-15-202. Filing fees.
- 9-15-203. Petition — Form.
- 9-15-204. Hearing — Service.
- 9-15-205. Relief generally — Duration.
- 9-15-206. Temporary order.
- 9-15-207. Order of protection — Enforcement — Penalties — Criminal jurisdiction.
- 9-15-208. Law enforcement assistance.
- 9-15-209. Modification of orders.
- 9-15-210. Contempt proceedings.

### SECTION.

- 9-15-211. Jurisdiction generally.
- 9-15-212. Effect of no contact order.
- 9-15-213. Police conduct and procedure.
- 9-15-214. Denial of relief prohibited.
- 9-15-215. Factors in determining custody and visitation.
- 9-15-216. Mutual orders of protection — Separate orders of protection.
- 9-15-217. Order of protection — Violations — Domestic violence surveillance program — Global positioning devices.

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**Effective Dates.** Acts 2009, No. 331, § 3: Mar. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that domestic violence is on the rise and poses a danger to the public; that increasing the penalty for repeat offenders aids both law enforcement and the victims of domestic violence and that this act is immediately necessary because current enforcement and prosecution will be greatly aided by the new, more serious penalties for those persons who repeat-

edly violate orders of protection. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Criminal Law, 12 U. Ark. Little Rock L.J. 617.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

### 9-15-201. Petition — Requirements generally.

- (a) All petitions under this chapter shall be verified.
- (b) The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served.
- (c)(1) A petition for relief under this chapter may be filed in the circuit court.



(2) A petition for relief under this chapter may be filed in a pilot district court if the jurisdiction is established by the Supreme Court under Arkansas Constitution, Amendment 80, § 7 and if the cases are assigned to the pilot district court through the Court Administrative Plan under the Arkansas Supreme Court Administrative Order No. 14.

(d) A petition may be filed by:

(1) Any adult family or household member on behalf of himself or herself;

(2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;

(3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or

(4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.

(e)(1) A petition for relief shall:

(A) Allege the existence of domestic abuse;

(B) Disclose the existence of any pending litigation between the parties; and

(C) Disclose any prior filings of a petition for an order of protection under this chapter.

(2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.

(f) The petition may be filed regardless of whether there is any pending litigation between the parties.

(g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the residence or household to avoid abuse.

**History.** Acts 1991, No. 266, §§ 3, 8; 2003, No. 1221, § 1; 2007, No. 314, § 1; 2009, No. 698, § 2.

**Amendments.** The 2007 amendment divided (e) into (1) and (2), inserted (1)(B)

and (C), and made related and stylistic changes.

The 2009 amendment inserted (c)(2), redesignated the remaining text as (c)(1), and substituted "may" for "shall" in (c)(1).

## CASE NOTES

### Pending Litigation.

Granting of the mother's petition for a temporary order of protection in the First Division was proper under subsection (f) of this section because the petition could have been filed regardless of whether there was any pending litigation between the parties. And, in granting the order of protection, the First Division made it

clear that while it was stopping the father's visitation pursuant to the protective order, the protective order was subject to modification by the Second Division; far from usurping the Second Division's authority, the First Division deferred to it, *Chiolak v. Chiolak*, 99 Ark. App. 277, 259 S.W.3d 466 (2007).

### 9-15-202. Filing fees.

(a) The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs.

(b) Established filing fees may be assessed at the full hearing.

(c)(1) The abused in any domestic violence petition for relief for a protection order sought pursuant to this subchapter shall not bear the cost associated with its filing or the costs associated with the issuance or service of a warrant and witness subpoena.

(2) Nothing in this subsection shall be construed to prohibit a judge from assessing costs if the allegations of abuse are determined to be false.

**History.** Acts 1991, No. 266, § 9; 1995, No. 401, § 1. enacted subsequently.

**A.C.R.C. Notes.** References to “this chapter” in subchapter 1 or § 9-15-201 may not apply to this section which was **Publisher’s Notes.** Acts 1995, No. 401, § 1, is also codified in part as § 5-26-310(b).

### CASE NOTES

#### Costs.

Court of appeals did not have jurisdiction pursuant to Ark. R. App. P. Civ. 2(a)(1) to hear the wife’s appeal as a final order had not been entered by the trial court when it conditionally granted the order of protection against the husband but made it contingent upon his paying

costs with the wife being allowed to “assist” him, tantamount to shifting the costs to the wife in violation of this section because the statute specifically stated that the petitioner should not be required to bear those costs. *Dobbs v. Dobbs*, 99 Ark. App. 156, 258 S.W.3d 414 (2007).

### 9-15-203. Petition — Form.

(a) The circuit clerk shall provide simplified forms and clerical assistance to help petitioners with the writing and filing of a petition under this chapter if the petitioner is not represented by counsel.

(b) The petition form shall not require or suggest that a petitioner include his or her social security number or the social security number of the respondent in the petition.

(c)(1)(A) A petitioner may omit his or her home address or business address from all documents filed with the court.

(B) If a petitioner omits his or her home address, the petitioner shall provide the court with a mailing address.

(2) If disclosure of a petitioner’s home address is necessary to determine jurisdiction or consider venue, the court may order the disclosure of the petitioner’s home address:

(A) After receiving the petitioner’s consent;

(B) Orally and in chambers, out of the presence of the respondent, and a sealed record to be made; or

(C) After a hearing, if the court takes into consideration the safety of the petitioner and finds the disclosure in the interest of justice.

(d) The petition may be in substantially the following form:

“Petition for Order of Protection

Case No.

Petitioner's home address:

Petitioner

Date of Birth

vs.

Petitioner's work address:

Respondent

Respondent's home address:

Date of Birth,  
if known

Respondent's work address:

\_\_\_\_ I am the petitioner and \_\_\_\_ at least 18 years of age \_\_\_\_ under 18 but emancipated.

           I am filing on behalf of myself.

       I am filing on behalf of a family or household member who is:

a minor(s): (list)

\_\_\_\_\_ an adjudicated incompetent person: (list)

\_\_\_\_ The respondent is \_\_\_\_ at least 18 years of age \_\_\_\_ under 18 but emancipated.

\_\_\_\_ I am an employee or volunteer of a domestic violence shelter or program, and I am filing on behalf of a minor.

The respondent and petitioner (or victim if filing on behalf of a minor or incompetent person): (check all that apply)

\_\_\_\_ Are spouses;

\_\_\_\_ Are parent and child;

\_\_\_\_ Are former spouses;

\_\_\_\_ Have or have had a  
child in common; or

\_\_\_\_\_ Are related by blood;

\_\_\_\_ Currently reside together or cohabit;

\_\_\_\_ Formerly resided together or  
cohabited;

\_\_\_\_ Are presently or in the past  
have been in a dating  
relationship.

If order of protection of children is requested:

Children	Date of Birth	Address	Relationship to Parties
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The respondent has committed domestic abuse to the petitioner or victim by the following acts: (describe)

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I am afraid of the respondent and: (describe)

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\_\_\_\_\_ (1) There is an immediate and present danger of domestic abuse to me; or

\_\_\_\_\_ (2) The respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse to me. The reasons are as follows: (describe)

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\_\_\_\_\_ Petitioner requests that the court issue an ex parte order of protection with the following provisions: (check all that apply)

\_\_\_\_\_ Excluding the respondent from a shared residence or from the residence of the petitioner or victim. Address of residence:

\_\_\_\_\_ Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of residence:

\_\_\_\_\_ Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of:

Place of business: \_\_\_\_\_

Employment: \_\_\_\_\_

School: \_\_\_\_\_

Other (identify): \_\_\_\_\_

Prohibiting the respondent, directly or through an agent, from contacting the petitioner or victim, except under the following conditions:

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The petitioner under oath states that the facts stated in the above petition are true according to the petitioner's best knowledge and belief.

Date

Petitioner's signature

STATE OF ARKANSAS

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_”

**History.** Acts 1991, No. 266, § 3; 1999, No. 662, § 1; 2001, No. 1678, § 4; 2005, No. 55, § 1; 2005, No. 1875, § 4; 2007, No. 314, § 2; 2009, No. 698, §§ 3, 4.

**A.C.R.C. Notes.** Acts 2009, No. 698, § 4, provided: “The Arkansas Code Revision Commission shall redesignate the existing subsection (c) in § 9-15-203 as subsection (d) in § 9-15-203.”

**Amendments.** The 2005 amendment by No. 55 inserted “clerk” in (a); inserted present (b); redesignated former (b) as present (c); and, in the form in present (c), substituted “Date of Birth” for “Social Security Number” twice, inserted “I am an employee or volunteer of a domestic violence shelter or program, and I am filing on behalf of a minor” and made minor stylistic changes.

The 2005 amendment by No. 1875, in the form in (b) [now (c)], substituted “Date

of Birth” for “Social Security Number” twice, and inserted “Are presently or in the past have been in a dating relationship.”

The 2007 amendment inserted the sections beginning “I am involved in pending litigation with the respondent” and “I have previously filed a petition for an order of protection” near the end of the Petition for Order of Protection form.

The 2009 amendment inserted (c) and redesignated the subsequent subsection as subsection (d).

**Cross References.** Domestic abuse definitions, § 9-15-103.

First degree assault on family or household member, § 5-26-307.

Warrantless arrest for domestic abuse, § 16-81-113.

**9-15-204. Hearing — Service.**

(a)(1) When a petition is filed pursuant to this chapter, the court shall order a hearing to be held on the petition for the order of protection not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later.

(2) A denial of an ex parte temporary order of relief does not deny the petitioner the right to a full hearing on the merits.

(b)(1) Service of a copy of the petition, the ex parte temporary order of protection, if issued, and notice of the date and place set for the hearing described in subdivision (a)(1) of this section shall be made upon the respondent:

(A) At least five (5) days before the date of the hearing; and

(B) In accordance with the applicable rules of service under the Arkansas Rules of Civil Procedure.

(2) If service cannot be made on the respondent, the court may set a new date for the hearing.



(c) This section does not preclude the court from setting an earlier hearing.

**History.** Acts 1991, No. 266, § 4; 1997, No. 895, § 1; 2009, No. 698, § 5.

**Amendments.** The 2009 amendment, in (a), inserted (a)(2) and redesignated the remaining text accordingly; subdivided (b), inserted “of a copy of the petition, the

ex parte temporary order of protection, if issued, and notice of the date and place set for the hearing described in subdivision (a)(1) of this section” in (b)(1), and inserted (b)(1)(B); and made minor stylistic changes.

### **9-15-205. Relief generally — Duration.**

(a) At the hearing on the petition filed under this chapter, upon a finding of domestic abuse as defined in § 9-15-103, the court may provide the following relief:

(1) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(2) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(3)(A) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties.

(B)(i) If a previous child custody or visitation determination has been made by another court with continuing jurisdiction with regard to the minor children of the parties, a temporary child custody or visitation determination may be made under subdivision (a)(3)(A) of this section.

(ii) The order shall remain in effect until the court with original jurisdiction enters a subsequent order regarding the children;

(4) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(5) Allow the prevailing party a reasonable attorney’s fee as part of the costs;

(6) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and

(7)(A) Order such other relief as the court deems necessary or appropriate for the protection of a family or household member.

(B) The relief may include, but not be limited to, enjoining and restraining the abusing party from doing, attempting to do, or threatening to do any act injuring, mistreating, molesting, or harassing the petitioner.

(b) Any relief granted by the court for protection under the provisions of this chapter shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists.

**History.** Acts 1991, No. 266, § 5; 1999, No. 662, § 2; 1999, No. 1551, § 2; 2007, No. 139, § 1; 2009, No. 698, § 6.

**Amendments.** The 2007 amendment inserted “circuit” before “court” in (a)(7)(A) and twice in (b); and in (b), substituted “ten (10)” for “two (2),” and inserted “in the discretion of the circuit court.”

The 2009 amendment, in (a), substi-

tuted “filed under this chapter, upon a finding of domestic abuse as defined in § 9-15-103, the court” for “the circuit court” in the introductory language, inserted (a)(3)(B) and redesignated the remaining text of (a)(3) accordingly; deleted “circuit” preceding “court” in (a)(7)(A) and three times in (b); and made related changes.

## CASE NOTES

### ANALYSIS

Evidence.

Relief.

Temporary Custody Order.

### Evidence.

Evidence was sufficient to support a decision to grant an order of protection under subsection (a) of this section where a former boyfriend admitted that he left his former girlfriend threatening text messages. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

### Relief.

Although the issue was not preserved

for review, a decision to exclude victim’s former boyfriend from a residence, even if the incorrect address was given, did not amount to prejudice since this relief was clearly permitted under subsection (a) of this section. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

### Temporary Custody Order.

An emergency temporary custody order is nonappealable for lack of finality. *Jones v. Jones*, 41 Ark. App. 146, 852 S.W.2d 325 (1993).

## 9-15-206. Temporary order.

(a) When a petition under this chapter alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent’s release there will be an immediate and present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition.

(b) An ex parte temporary order of protection may:

(1) Include any of the orders provided in §§ 9-15-203 and 9-15-205; and

(2) Provide the following relief:

(A) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(B) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(C) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;

(D) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(E) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and

(F)(i) Order such other relief as the court considers necessary or appropriate for the protection of a family or household member.

(ii) The relief may include without limitation enjoining and restraining the abusing party from doing, attempting to do, or threatening to do an act injuring, mistreating, molesting, or harassing the petitioner.

(c) An ex parte temporary order of protection is effective until the date of the hearing described in § 9-15-204.

(d) Incarceration or imprisonment of the abusing party shall not bar the court from issuing an ex parte temporary order of protection.

**History.** Acts 1991, No. 266, § 6; 1997, No. 895, § 2; 1999, No. 662, § 3; 1999, No. 1551, § 3; 2009, No. 698, § 7. **Amendments.** The 2009 amendment rewrote the section.

### **9-15-207. Order of protection — Enforcement — Penalties — Criminal jurisdiction.**

(a) Any order of protection granted under this chapter is enforceable by a law enforcement agency with proper jurisdiction.

(b) An order of protection shall include a notice to the respondent or party restrained that:

(1) A violation of the order of protection is a Class A misdemeanor carrying a maximum penalty of one (1) year imprisonment in the county jail or a fine of up to one thousand dollars (\$1,000), or both;

(2) A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(3) It is unlawful for an individual who is subject to an order of protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(8) and (9) as it existed on January 1, 2007; and

(4) A conviction of violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony.

(c) For respondents eighteen (18) years of age or older or emancipated minors, jurisdiction for the criminal offense of violating the terms of an order of protection is with the circuit court or other courts having jurisdiction over criminal matters.

(d)(1) In the final order of protection, the petitioner's home or business address may be excluded from notice to the respondent.

(2) A court shall also order that the petitioner's copy of the order of protection be excluded from any address where the respondent happens to reside.

(e) A law enforcement officer shall not arrest a petitioner for the violation of an order of protection issued against a respondent.



(f) When a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and has been presented verification of the existence of the order of protection, the officer may arrest the respondent without a warrant whether or not the violation occurred in the presence of the officer if the order of protection was obtained according to this chapter and the Arkansas Rules of Criminal Procedure.

(g) An order of protection issued by a court of competent jurisdiction in any county of this state is enforceable in every county of this state by any court or law enforcement officer.

**History.** Acts 1991, No. 266, § 10; 1999, No. 1551, § 4; 2001, No. 1469, § 1; 2007, No. 676, § 2; 2009, No. 331, § 2; 2009, No. 698, § 8.

**Amendments.** The 2007 amendment added (c) and redesignated the remaining subsections accordingly.

The 2009 amendment by No. 331 rewrote (b) and (c) and redesignated them as

(b), inserted (e), and redesignated the remaining subsections accordingly; and made minor stylistic changes.

The 2009 amendment by No. 698 inserted “For respondents eighteen (18) years of age or older and emancipated minors” in (d), and made related changes.

### **9-15-208. Law enforcement assistance.**

(a) When an order is issued under this chapter, upon request of the petitioner the circuit court may order a law enforcement officer with jurisdiction to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence or to otherwise assist in execution or service of the order of protection.

(b) The court may also order a law enforcement officer to assist the petitioner in returning to the residence and getting personal effects.

**History.** Acts 1991, No. 266, § 7; 1999, No. 1551, § 5.

### **9-15-209. Modification of orders.**

Any order of protection issued by the circuit court pursuant to a petition filed as authorized in this chapter may be modified upon application of either party, notice to all parties, and a hearing thereon.

**History.** Acts 1991, No. 266, § 10.

### **9-15-210. Contempt proceedings.**

When a petitioner or any law enforcement officer files an affidavit with a circuit court that has issued an order of protection under the provisions of this chapter alleging that the respondent or person restrained has violated the order, the court may issue an order to the respondent or person restrained requiring that person to appear and show cause why he or she should not be found in contempt.

**History.** Acts 1991, No. 266, § 10.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Family Law, Protection Orders, Legislation, 2003 Arkansas General As- 26 U. Ark. Little Rock L. Rev. 415.

### 9-15-211. Jurisdiction generally.

If any provision of this chapter granting jurisdiction in the chancery court is held invalid or if, for some reason the chancery court cannot exercise jurisdiction under this chapter, then pursuant to Arkansas Constitution, Article 7, § 11 [repealed], the circuit court shall have jurisdiction over such matters.

**History.** Acts 1991, No. 266, § 14.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

### 9-15-212. Effect of no contact order.

A no contact order shall prohibit the person from making contact, directly or through an agent, except under such conditions as may be provided in the order.

**History.** Acts 1999, No. 662, § 4.

### 9-15-213. Police conduct and procedure.

All law enforcement officers shall follow the same procedures as outlined in § 16-90-1107.

**History.** Acts 1999, No. 1551, § 6.

### 9-15-214. Denial of relief prohibited.

The circuit court shall not deny a petitioner relief solely because the act of domestic or family violence and the filing of the petition did not occur within one hundred twenty (120) days.

**History.** Acts 1999, No. 1551, § 7.

### 9-15-215. Factors in determining custody and visitation.

(a) In addition to other factors that a circuit court shall consider in a proceeding in which the temporary custody of a child or temporary visitation by a parent is at issue and in which the court has made a finding of domestic or family violence, the court shall consider:

(1) As primary the safety and well-being of the child and of the parent who is the plaintiff of domestic or family violence; and

(2) The defendant's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.

(b) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(c) There shall be a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that a pattern of abuse has occurred.

**History.** Acts 1999, No. 1551, § 8; 2001, No. 1235, § 2.

**Cross References.** Award of custody, § 9-13-101.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Note, Family Law — Relocation Disputes — From Paycheck to Paycheck: The Demotion of the Noncustodial Parent with

the Creation of the Custodial Parent's Presumptive Right to Relocate. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003), 26 U. Ark. Little Rock L. Rev. 615.

Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 921.

### CASE NOTES

#### Modification.

The polestar in making a relocation determination is the best interest of the child and the trial court should take into consideration the following matters: (1) the reason for the relocation; (2) the educational, health, and leisure opportunities available in the location in which the custodial parent and children will relocate; (3) visitation and communication schedule for the noncustodial parent; (4) the effect of the move on the extended family relationships in the location in which the custodial parent and children will relocate, as well as Arkansas; and (5) preference of the child, including the age,

maturity, and the reasons given by the child as to his or her preference. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Relocation alone is not a material change in circumstance, and a presumption exists in favor of relocation for custodial parents with primary custody; the noncustodial parent should have the burden to rebut the relocation presumption, and the custodial parent no longer has the obligation to prove a real advantage to herself or himself and to the children in relocating. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

### 9-15-216. Mutual orders of protection — Separate orders of protection.

(a) Except as provided in subsection (b) of this section, a circuit court shall not grant a mutual order of protection to opposing parties.

(b) Separate orders of protection restraining each opposing party may only be granted in cases in which each party:

- (1) Has properly filed and served a petition for an order of protection;
- (2) Has committed domestic abuse as defined in § 9-15-103;
- (3) Poses a risk of violence to the other; and

(4) Has otherwise satisfied all prerequisites for the type of order and remedies sought.



**History.** Acts 2001, No. 1437, § 1.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Practice, Procedure, and Courts, 24 U. Ark. Little Rock L. Rev. 523.

#### **9-15-217. Order of protection — Violations — Domestic violence surveillance program — Global positioning devices.**

(a)(1)(A) A person who is charged with violating an ex parte order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(B) A person who is charged with violating a final order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(2) The court having jurisdiction over the charge may order the defendant released from electronic surveillance before the adjudication of the charge.

(b) A person who is found guilty of violating an order of protection may be placed under electronic surveillance at his or her expense as part of his or her sentence for a minimum of four (4) months but not to exceed one (1) year.

(c) As used in this section, “electronic surveillance” means active surveillance technology worn by or attached to a person that is a single-piece device that immediately notifies law enforcement or other monitors of a violation of the distance requirements or locations that the defendant is barred from entering and may also include technology that:

- (1) Immediately notifies the victim of any violation;
- (2) Allows law enforcement or monitors to speak to the offender in some manner through or in conjunction with the device;
- (3) Has a loud alarm that can be activated to warn the potential victim of the offender’s presence in a place he or she is barred from entering;
- (4) Is waterproof; and
- (5) Can be tracked by either satellite or cellular phone tower triangulation.

**History.** Acts 2009, No. 1447, § 1.

### **SUBCHAPTER 3 — OUT-OF-STATE ORDERS OF PROTECTION**

#### SECTION.

9-15-301. [Repealed.]

9-15-302. Full faith and credit.

#### SECTION.

9-15-303. Immunity from liability.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-2 may not apply to this subchapter which was enacted subsequently.

**Effective Dates.** Acts 1995, No. 995, § 8: Oct. 1, 1995.

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### 9-15-301. [Repealed.]

**Publisher’s Notes.** This section, concerning the filing of out of state orders of protection, was repealed by Acts 2003, No.

651, § 1. The section was derived from Acts 1995, No. 995, § 2.

### 9-15-302. Full faith and credit.

(a) Any order of protection that meets the requirements of subsection (b) or subsection (c) of this section issued by a court of another state, a federally recognized Indian tribe, or a territory shall be afforded full faith and credit by the courts of this state and shall be enforced by law enforcement as if it were issued in this state.

(b) An order of protection issued by a court of another state, a federally recognized Indian tribe, or a territory meets the requirements of this section if:

(1) The court had jurisdiction over the parties and matters under the laws of the other state, the federally recognized Indian tribe, or the territory; and

(2)(A) Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person’s right to due process.

(B) In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the laws or rules of the other state, the federally recognized Indian tribe, or the territory and, in any event, within a reasonable time after the order is issued sufficient to protect the due process rights of the party against whom the order is enforced.

(c) An order of protection issued against both the petitioner and the respondent by a court of another state, a federally recognized Indian tribe, or a territory shall not be enforceable against the petitioner unless:

(1) The respondent filed a cross or counter petition, complaint, or other written pleading seeking an order of protection;

(2) The issuing court made specific findings against both the petitioner and the respondent; and

(3) The issuing court determined that each party was entitled to an order.

(d)(1) A person seeking recognition and enforcement of an out-of-state order of protection under this section may present a copy of the order of protection to the local law enforcement office in the city or county where enforcement of the order may be necessary.

(2) After receiving a copy of the order of protection, the local law enforcement office shall enter the order into the Arkansas Crime Information Center's protection order registry file.

(3) There shall be no fee for entering the out-of-state order of protection.

(4) The law enforcement office shall not notify the party against whom the order has been issued that an out-of-state order of protection has been entered in this state.

(5) Entry of the out-of-state order of protection into the center's protection order registry file shall not be required for enforcement of the order of protection in this state.

(e)(1)(A) When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that an out-of-state order of protection exists.

(B) A law enforcement officer may rely upon:

(i) An out-of-state order of protection that has been provided to the officer by any source; or

(ii)(a) The statement of any person protected by an out-of-state order of protection that the order exists; and

(b) Verification by the clerk of the court of the other state, the federally recognized Indian tribe, or the territory in writing, by telephone, or by facsimile transmission or other electronic transmission.

(2)(A) When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that the terms of the order have been violated.

(B) The law enforcement officer may rely upon:

(i) Any events he or she witnessed;

(ii) The statement of any person who claims to be a witness; or

(iii) Any other evidence.

(3) A law enforcement officer shall not refuse to enforce the terms of the order of protection on the grounds that the order has not been filed with the local law enforcement office or entered into the center's protection order registry file unless the law enforcement officer has a reasonable belief that the order is not authentic on its face.

**History.** Acts 1995, No. 995, § 3; 2003, No. 651, § 2.

**Cross References.** Violation of an order of protection, § 5-53-134.

### 9-15-303. Immunity from liability.

Law enforcement officers and law enforcement agencies shall be immune from civil or criminal liability if acting in good faith in an effort to comply with this subchapter.

**History.** Acts 1995, No. 995, § 4; 2003, No. 651, § 3.



**SUBCHAPTER 4 — SPOUSAL ABUSE SAFETY PLAN ACT**

## SECTION.

9-15-401. Title.

9-15-402. Findings — Purpose.

9-15-403. Definitions.

9-15-404. Safety plans and education.

## SECTION.

9-15-405. Educational and training materials.

9-15-406. Rules.

9-15-407. Reporting.

**9-15-401. Title.**

This subchapter shall be known and may be cited as the “Spousal Abuse Safety Plan Act”.

**History.** Acts 2007, No. 1414, § 1.

**9-15-402. Findings — Purpose.**

(a) The General Assembly finds that:

(1) There are many resources to support victims of domestic abuse after the abuse has occurred. However, the issues of how to prevent spousal abuse and the possible solution of creating a safety plan for the spouse and the children in the household have received very little attention;

(2) Exposure to domestic abuse and spousal abuse has a devastating impact on both the children and adults in households and communities, regardless of whether they are direct victims of abuse or witnesses to it; and

(3) Children exposed to such violence at an early age are likely to become either perpetrators of abuse or victims of violence in adulthood, which is a cycle that can only be stopped through intervention and education.

(b) The purpose of this subchapter is to reduce the occurrence of spousal abuse and to reduce the exposure of children to spousal abuse by creating a safety plan for the spouse that is a victim of the spousal abuse and for the children in the household.

**History.** Acts 2007, No. 1414, § 1.

**9-15-403. Definitions.**

As used in this subchapter:

(1) “Emotional abuse” means any of the following acts:

(A) Verbally attacking or threatening a spouse by yelling, screaming, or name-calling;

(B) Using criticism, social isolation, intimidation, or exploitation to dominate a spouse;

(C) Criminally harassing a spouse;

(D) Stalking a spouse;

(E) Threatening a spouse or his or her loved ones;

(F) Damaging a spouse’s possessions; or

(G) Harming the pet of a spouse;

(2)(A) "Physical abuse" means any of the following acts:

(i) Using physical force in a way that injures a spouse or puts him or her at risk of being injured; or

(ii) Beating, hitting, shaking, pushing, choking, biting, burning, kicking, or assaulting a spouse with a weapon.

(B) "Physical abuse" may consist of one (1) or more than one (1) incident described under subdivision (2)(A) of this section;

(3)(A) "Sexual abuse" means any of the following acts:

(i) Forcing a spouse to participate in unwanted, unsafe, or degrading sexual activity; or

(ii) Using ridicule or other tactics to try to denigrate, control, or limit a spouse's sexuality or reproductive choices.

(B) "Sexual abuse" includes rape, sexual assault, or sexual harassment; and

(4)(A) "Spousal abuse" means an act of violence or mistreatment that a woman or a man may experience at the hands of his or her marital partner, regardless of the timing of the act in terms of the stage of the relationship.

(B) "Spousal abuse" includes any of the following committed by a spouse against his or her spouse:

(i) Emotional abuse;

(ii) Physical abuse; or

(iii) Sexual abuse.

**History.** Acts 2007, No. 1414, § 1.

## **9-15-404. Safety plans and education.**

The purpose of this subchapter is to:

(1) Develop increased and improved security measures that provide greater protection for victims of spousal abuse, especially those who have orders of protection;

(2) Help victims create a safety plan to keep them and their children as safe as possible by developing publications as described under § 9-15-405 on what to do and where to go if danger occurs;

(3) Make safety plan publications as described under § 9-15-405 available in public health centers and for distribution to victims by police officers when responding to spousal abuse calls;

(4) Create special training initiatives regarding the dynamics of spousal abuse for police intake officers, health officials, and social workers in order to help ensure a continuously improving response to spousal abuse;

(5) Encourage the development of community-based, civic-based, and faith-based healthy relationship courses to teach to both adolescent boys and adolescent girls as they begin to date:

(A) The elements of healthy relationships;

(B) Acceptable and unacceptable behavior in relationships;

(C) The concept of respect;

(D) Conflict resolution techniques;

- (E) Antiviolence; and
- (F) The prevention of sexual assault and sexual harassment;
- (6) Help raise awareness about the devastating impact that spousal abuse has on children and families; and
- (7) Assist with the development of increased protection of victims of spousal abuse by establishing standards for protection and response by convening a committee of relevant experts in the field of health care and law enforcement to recommend standards to the General Assembly.

**History.** Acts 2007, No. 1414, § 1.

**9-15-405. Educational and training materials.**

- (a) The Arkansas Child Abuse/Rape/Domestic Violence Commission, in consultation with experts on spousal abuse prevention and intervention, shall develop educational material and training material to address the issues under this subchapter.
- (b) The educational material and training material shall be published and distributed around the state.

**History.** Acts 2007, No. 1414, § 1.

**9-15-406. Rules.**

The Arkansas Child Abuse/Rape/Domestic Violence Commission shall promulgate rules to implement and administer this subchapter.

**History.** Acts 2007, No. 1414, § 1.

**9-15-407. Reporting.**

- The Arkansas Child Abuse/Rape/Domestic Violence Commission shall report annually to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth regarding:
- (1) The status of the implementation and administration of this subchapter and its purposes; and
- (2) Any recommended changes in the law to improve the prevention of or intervention into spousal abuse situations.

**History.** Acts 2007, No. 1414, § 1.

**CHAPTER 16**

**FAMILY PRESERVATION SERVICES PROGRAM ACT**

SECTION.	SECTION.
9-16-101. Title.	dren and Family Services
9-16-102. Definitions.	— Duties.
9-16-103. Director of the Division of Chil-	9-16-104. Division of Children and Fam-



## SECTION.

## ily Services — Duties.

9-16-105. Provision of services by contract.

9-16-106. Children qualified to receive services.

9-16-107. Provision of services — Reason-

## SECTION.

able effort — Acceptance not an admission — Activity of family members.

9-16-108. Evaluation.

9-16-109. Provision of services — Funding.

### 9-16-101. Title.

This chapter shall be known as the “Family Preservation Services Program Act”.

**History.** Acts 1991, No. 1025, § 1; 2001, No. 906, § 1.

### 9-16-102. Definitions.

“Family preservation services” means services for children and families that are designed to help families at risk or in crisis, including adoptive and extended families, and include:

(1) Service programs designed to help a child:

(A) When safe and appropriate, be returned to the family from which he or she has been removed;

(B) Be placed for adoption;

(C) Be placed with a legal guardian; and

(D) If adoption or legal guardianship is determined not to be safe and appropriate for the child, be placed in some other planned, permanent living arrangement;

(2) Preplacement preventive services programs, such as intensive family preservation programs, designed to help a child at risk of foster care placement remain safely with his or her family;

(3) Service programs designed to provide follow-up care to a family to which a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers, including foster parents; and

(5) Services designed to improve parenting skills by reinforcing a parent’s confidence in his or her strengths and by helping a parent identify where improvement is needed and to obtain assistance in improving those skills with respect to matters such as child development, family budgeting, coping with stress, and health and nutrition.

**History.** Acts 1991, No. 1025, § 2; 2001, No. 906, § 2.

### 9-16-103. Director of the Division of Children and Family Services — Duties.

The Director of the Division of Children and Family Services of the Department of Human Services shall:

(1)(A) Make family preservation services accessible to all cases in which a child is about to be placed outside his or her home, or in

which a child has been placed outside his or her home, and in which the goal is reunification.

(B) The director shall make family preservation services accessible to all cases in which a child is about to be removed or reunification is the goal and the provision of such services is appropriate;

(2) Ensure that statewide availability of family preservation services is accomplished in an orderly fashion, with modification based on analysis of an annual evaluation report; and

(3) Continue the implementation of family preservation services by consultation with professionals who are nationally recognized in the field.

**History.** Acts 1991, No. 1025, § 3;  
2001, No. 906, § 3.

### **9-16-104. Division of Children and Family Services — Duties.**

(a) The Division of Children and Family Services of the Department of Human Services shall be the lead administrative agency for family preservation services and may receive funding for the implementation of such services.

(b) The division shall:

(1) Provide the coordination of and planning for the implementation of family preservation services;

(2) Provide standards for the family preservation services programs;

(3) Monitor the services to ensure they meet measurable standards of performance as set forth in state law and as developed by the division; and

(4) Provide the initial training curriculum and approve any on-going curriculum required by providers of family preservation services.

**History.** Acts 1991, No. 1025, § 4.

### **9-16-105. Provision of services by contract.**

(a) The Division of Children and Family Services of the Department of Human Services may provide family preservation services directly or may contract with a private, nonprofit social service agency or qualified individual to provide such services.

(b) In the event a nonprofit social service agency or qualified individual is contracted by the Department of Human Services, to provide family preservation services, the contract shall include requirements for:

(1) Provider acceptance of any client referred by the department for family preservation services;

(2) Limitation of caseload;

(3) Availability of twenty-four-hour crises intervention services to families served by the program;

(4) Completion of the required training curriculum for family preservation services; and

(5) Provision of and conduct of an internal program evaluation and cooperation with an external evaluation as directed by the division.

**History.** Acts 1991, No. 1025, § 5;  
2001, No. 906, § 4.

### **9-16-106. Children qualified to receive services.**

(a)(1) Family preservation services shall be provided to those children who are placed out-of-home for whom the goal is reunification and for those children who are at actual, imminent risk of out-of-home placement in situations in which family preservation services afford effective protection of children, youth, families, and the community.

(2) This shall include children:

(A) Who are at risk of removal as dependent, abused, or neglected;

(B) Whose families are in conflict such that they are unable to exercise reasonable control of the child.

(b) The implementation of family preservation services shall be extended to those families for whom ongoing assessment indicates protection can be maintained.

(c) Families shall not be eligible for family preservation services in which children are at risk of recurring sexual abuse perpetrated by a member of their immediate household and whose continued safety from recurring abuse cannot be reasonably assured.

**History.** Acts 1991, No. 1025, § 6;  
2001, No. 906, § 5.

### **9-16-107. Provision of services — Reasonable effort — Acceptance not an admission — Activity of family members.**

(a) The provision of family preservation services to a family shall constitute a reasonable effort by the Department of Human Services to prevent the removal of a child from the child's home, provided that the family has received timely access to other services from the department for which the family is eligible.

(b) Acceptance of family preservation services shall not be considered an admission of any allegation that initiated the investigation of the family, nor shall refusal of family preservation services be considered as evidence in any proceeding except when the issue is whether the department has made reasonable efforts to prevent removal of a child.

(c) No family preservation services program shall compel any family member to engage in any activity or refrain from any activity that is not reasonably related to remedying a condition or conditions that gave rise or that could reasonably give rise to any finding of child abuse, neglect, or dependency.

**History.** Acts 1991, No. 1025, § 7.



**9-16-108. Evaluation.**

The Director of the Division of Children and Family Services of the Department of Human Services shall conduct a yearly evaluation of family preservation services that shall include the following:

(1) The number of families in which the use of family preservation services has been an alternative to placement of the child if available;

(2) The number of families receiving family preservation services, including the number of children in those families;

(3) Among those families receiving family preservation services, the number of children placed outside the home and the average cost per family of providing family preservation services;

(4) The estimated cost of out-of-home placement that would have been expended on behalf of those children who received family preservation services based on the average lengths of stay and the average costs of out-of-home placements;

(5) The number of children who remain unified with their families six (6) months and one (1) year after completion of family preservation services; and

(6) An overall evaluation of the progress of family preservation services programs during the preceding year, recommendations for improvements in delivery of this service, and a plan for the continued development of family preservation services to ensure progress towards statewide availability.

**History.** Acts 1991, No. 1025, § 8;  
2001, No. 906, § 6.

**9-16-109. Provision of services — Funding.**

The Deputy Director of the Division of Children and Family Services of the Department of Human Services may use funds that become available through an increase in reimbursement of funds from family preservation services from Title IV-E of the Social Security Act as amended by Pub. L. No. 96-272, for the purposes of providing family preservation services to children who would otherwise be removed from their homes or are receiving services to achieve reunification.

**History.** Acts 1991, No. 1025, § 9. Security Act, referred to in this section, is  
**U.S. Code.** Title IV-E of the Social codified as 42 U.S.C. § 670 et seq.

**CHAPTER 17****UNIFORM INTERSTATE FAMILY SUPPORT ACT****ARTICLE.**

1. GENERAL PROVISIONS

2. JURISDICTION

3. CIVIL PROVISIONS OF GENERAL APPLICATION

4. ESTABLISHMENT OF SUPPORT ORDER

5. DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

## ARTICLE

6. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION
7. DETERMINATION OF PARENTAGE
8. INTERSTATE RENDITION
9. MISCELLANEOUS PROVISIONS

**A.C.R.C. Notes.** Acts 1993, No. 468, § 7, provided: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

**Cross References.** For comments regarding the Uniform Interstate Family Support Act, see Commentaries Volume B.

**Effective Dates.** Acts 1993, No. 468, § 9: Mar. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that currently one in four children in the United States grows up in a single parent household and that millions of these children fail to re-

ceive the financial support that they are owed; that this financial support is crucial to sustaining family life and often to averting outright poverty; that children whose parents live in different states suffer for the most since a conflict between jurisdictions can often stand as a serious impediment to the enforcement of a child support order; that this act provides for one-state control of a case and for a clear and efficient method of interstate case processing; and that this act should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## RESEARCH REFERENCES

**Am. Jur.** 23 Am. Jur. 2d, Desert. & N., § 117 et seq.

**Ark. L. Notes.** Laurence, Protecting Alimony: Steps to Take in Contemplation of Default under a Divorce Decree, 1985 Ark. L. Notes 57.

Brummer, Statutory Primer: The Uniform Interstate Family Support Act, 1994 Ark. L. Notes 77.

**Ark. L. Rev.** Leflar, Conflict of Laws: Arkansas, 1978-82, 36 Ark. L. Rev. 191.

Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

**C.J.S.** 2 C.J.S., Adoption, § 139.

14 C.J.S., Child, § 51.

27C C.J.S., Divorce, §§ 719, 826 et seq.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200 (1978).

Legislative Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

## CASE NOTES

**Reciprocity.**

A sister state's failure to enact the Uniform Interstate Family Support Act does not permit the court to decline to enforce a child support order of a sister state filed pursuant to this chapter. Jefferson County Child Support Enforcement Unit v. Hollands, 327 Ark. 456, 939 S.W.2d 302 (1997).

Mother validly assigned her right to collect child support from the father to the

state of Missouri, which meant that pursuant to this chapter, Arkansas recognized the collection orders from Missouri. Clemmons v. Office of Child Support Enforcement, 345 Ark. 330, 47 S.W.3d 227 (2001).

**Cited:** Chaisson v. Ragsdale, 323 Ark. 373, 914 S.W.2d 739 (1996); Davis v. Child Support Enforcement Unit, 326 Ark. 677, 933 S.W.2d 798 (1996).

**ARTICLE 1****GENERAL PROVISIONS**

## SECTION.

9-17-101. Definitions.

9-17-102. Tribunal of this state.

## SECTION.

9-17-103. Remedies cumulative.

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**Cross References.** Employment of attorneys to enforce child support, § 9-14-210.

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**9-17-101. Definitions.**

In this chapter:

(1) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) “Child-support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) “Home state” means the state in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) “Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) “Income-withholding order” means an order or other legal process directed to an obligor’s employer or other debtor, as defined by the income-withholding law of this state, to withhold support from the income of the obligor.

(7) “Initiating state” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(8) “Initiating tribunal” means the authorized tribunal in an initiating state.



(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(iii) an individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent:

(i) who owes or is alleged to owe a duty of support;

(ii) who is alleged but has not been adjudicated to be a parent of a child; or

(iii) who is liable under a support order.

(14) "Register" means to file a support order or judgment determining parentage in the appropriate circuit court.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(i) an Indian tribe; and

(ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

- (ii) establishment or modification of child support;
- (iii) determination of parentage; or
- (iv) to locate obligors or their assets.

(21) “Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, and other relief.

(22) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 1-3.

**Publisher’s Notes.** The Revised Uniform Reciprocal Enforcement of Support Act, referred to in this section, was repealed by Acts 1993, No. 468, § 8. The act had previously been codified as § 9-14-301 et seq.

**Cross References.** “Child support order” defined for this title, § 9-14-201(2).

“Income” defined for this title, § 9-14-201(4)(A).

“Notice” defined for this title, § 9-14-201(8).

## RESEARCH REFERENCES

**Ark. L. Rev.** Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

## CASE NOTES

### ANALYSIS

In General.  
Applicability.

#### In General.

When a decree was entered in Germany as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of the husband’s obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

### Applicability.

Because the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C.S. § 1901 et seq., did not apply to the adoption of the minor child because she was not an “Indian child” as defined in 25 U.S.C.S. § 1903(4), this section did not serve as Arkansas recognition of the tribe and did not apply to grant Indian child status to the minor child. *Vick v. Cecil (In re A.M.C.)*, 368 Ark. 369, 246 S.W.3d 426 (2007).

## 9-17-102. Tribunal of this state.

The circuit court is the tribunal of this state.

**History.** Acts 1993, No. 468, § 1.

### 9-17-103. Remedies cumulative.

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

**History.** Acts 1993, No. 468, § 1.

## ARTICLE 2

### JURISDICTION

#### Part 1. Extended Personal Jurisdiction

##### SECTION.

- 9-17-201. Basis for jurisdiction over non-resident.  
9-17-202. Procedure when exercising jurisdiction over nonresident.

#### Part 2. Proceedings Involving Two or More States

- 9-17-203. Initiating and responding tribunal of this state.  
9-17-204. Simultaneous proceedings in another state.

##### SECTION.

- 9-17-205. Continuing, exclusive jurisdiction.  
9-17-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.

#### Part 3. Reconciliation with Orders of Other States

- 9-17-207. Recognition of controlling child support order.  
9-17-208. Multiple child support orders for two or more obligees.  
9-17-209. Credit for payments.

## PART 1 — EXTENDED PERSONAL JURISDICTION

**Publisher's Notes.** Part A of this article was redesignated as Part 1 by Acts 1997, No. 1063, § 20.

### 9-17-201. Basis for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) the individual is personally served with summons within this state;
- (2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this state;
- (4) the individual resided in this state and provided prenatal expenses or support for the child;
- (5) the child resides in this state as a result of the acts or directives of the individual;



(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage in the Putative Father Registry maintained in this state by the Department of Health; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

**History.** Acts 1993, No. 468, § 1.

### CASE NOTES

#### **Other Basis.**

Putative father's contacts with Arkansas were sufficient to meet due process requirements under subdivision (8) of this section, § 16-4-101, and U.S. Const., Amend. 14, based on his agreement to submit to a paternity test in Arkansas and given the fact that he drove to Arkansas for the test that was administered in Arkansas. Moreover, the father could have reasonably anticipated being haled into court in Arkansas because a person sub-

mitting to a paternity test could foresee the possibility that a paternity suit and support action could have been brought there, and finally, the exercise of jurisdiction over the father did not offend traditional notions of fair play and substantial justice when the burden of litigating the action was in no way unreasonable and the state had an interest in protecting its minor children and ensuring the payment of child support. *Payne v. France*, 373 Ark. 175, 282 S.W.3d 760 (2008).

#### **9-17-202. Procedure when exercising jurisdiction over nonresident.**

A tribunal of this state exercising personal jurisdiction over a nonresident under § 9-17-201 may apply § 9-17-316 (Special rules of evidence and procedure) to receive evidence from another state and § 9-17-318 (Assistance with discovery) to obtain discovery through a tribunal of another state. In all other respects, articles 3-7 of this chapter do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

**History.** Acts 1993, No. 468, § 1.

### **PART 2 — PROCEEDINGS INVOLVING TWO OR MORE STATES**

**Publisher's Notes.** Part B of this Article was redesignated as Part 2 by Acts 1997, No. 1063, § 20.

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#### **9-17-203. Initiating and responding tribunal of this state.**

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

**History.** Acts 1993, No. 468, § 1.

**9-17-204. Simultaneous proceedings in another state.**

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state is the home state of the child.

**History.** Acts 1993, No. 468, § 1.

**9-17-205. Continuing, exclusive jurisdiction.**

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 4.

### CASE NOTES

#### **Spousal Support.**

Pursuant to subsection (f) of this section, the chancery court lacked jurisdiction to consider a petition to modify a

spousal support award contained in a foreign decree of divorce. *Tyler v. Talburt*, 73 Ark. App. 260, 41 S.W.3d 431 (2001).

### **9-17-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.**

(a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply § 9-17-316 (Special rules of evidence and procedure) to receive evidence from another state and § 9-17-318 (Assistance with discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

**History.** Acts 1993, No. 468, § 1.

## **PART 3 — RECONCILIATION WITH ORDERS OF OTHER STATES**

**Publisher's Notes.** Part C of this Article was redesignated as Part 3 by Acts 1997, No. 1063, § 20.



**9-17-207. Recognition of controlling child support order.**

(a) If a proceeding is brought under this chapter and only one (1) tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this chapter, and two (2) or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one (1) of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one (1) of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(c) If two (2) or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under § 9-17-205.

(e) A tribunal of this state which determines by order the identity of the controlling order under subdivision (b)(1) or (2) of this section or which issues a new controlling order under subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within thirty (30) days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

**9-17-208. Multiple child support orders for two or more obligees.**

In responding to multiple registrations or petitions for enforcement of two (2) or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one (1) of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

**History.** Acts 1993, No. 468, § 1.

**9-17-209. Credit for payments.**

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

**History.** Acts 1993, No. 468, § 1.

**ARTICLE 3****CIVIL PROVISIONS OF GENERAL APPLICATION****SECTION.**

- 9-17-301. Proceedings under this chapter.
- 9-17-302. Action by minor parent.
- 9-17-303. Application of law of this state.
- 9-17-304. Duties of initiating tribunal.
- 9-17-305. Duties and powers of responding tribunal.
- 9-17-306. Inappropriate tribunal.
- 9-17-307. Duties of support enforcement agency.
- 9-17-308. Duty of prosecuting attorney.
- 9-17-309. Private counsel.
- 9-17-310. Duties of state information agency.
- 9-17-311. Pleadings and accompanying documents.

**SECTION.**

- 9-17-312. Nondisclosure of information in exceptional circumstances.
- 9-17-313. Costs and fees.
- 9-17-314. Limited immunity of petitioner.
- 9-17-315. Nonparentage as defense.
- 9-17-316. Special rules of evidence and procedure.
- 9-17-317. Communications between tribunals.
- 9-17-318. Assistance with discovery.
- 9-17-319. Receipt and disbursement of payments.

**9-17-301. Proceedings under this chapter.**

(a) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(b) This chapter provides for the following proceedings:

(1) establishment of an order for spousal support or child support pursuant to article 4 of this chapter;

(2) enforcement of a support order and income-withholding order of another state without registration pursuant to article 5 of this chapter;

(3) registration of an order for spousal support or child support of another state for enforcement pursuant to article 6 of this chapter;

(4) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to article 2, part 2, of this chapter;

(5) registration of an order for child support of another state for modification pursuant to article 6 of this chapter;

(6) determination of parentage pursuant to article 7 of this chapter; and

(7) assertion of jurisdiction over nonresidents pursuant to article 2, part 1, of this chapter.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 6.

## CASE NOTES

### ANALYSIS

Purpose.  
Spousal Support.

#### **Purpose.**

It is manifest from the title of this chapter, as well as the description of proceedings that may be brought under it, that the enforcement of interstate child support awards is the chapter's purpose and focal point; the duties and powers of the responding tribunal relate to the goal of enforcing child support orders. *Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

### **Spousal Support.**

When a decree was entered in Germany as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of husband's obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

Office of Child Support Enforcement had the explicit authority to enforce spousal support orders. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

## **9-17-302. Action by minor parent.**

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

**History.** Acts 1993, No. 468, § 1.

## **9-17-303. Application of law of this state.**

Except as otherwise provided by this chapter, a responding tribunal of this state:

(1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings



originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

**History.** Acts 1993, No. 468, § 1.

### **9-17-304. Duties of initiating tribunal.**

(a) Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three (3) copies of the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this chapter or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 7.

### **9-17-305. Duties and powers of responding tribunal.**

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to § 9-17-301(c) (Proceedings under this chapter), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one (1) or more of the following:

(1) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 8, 9.

## CASE NOTES

### ANALYSIS

In General.

Purpose.

Visitation.

### In General.

Actions under this subchapter are not intended to open up for renewed scrutiny all issues arising out of a foreign divorce; issues such as visitation and payment of debts under the divorce decree, which are collateral matters that necessarily burden the child support determination and run counter to the goal of streamlining these proceedings, are not to be considered. *Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

### Purpose.

It is manifest from the title of this chapter, as well as the description of proceedings that may be brought under it, that the enforcement of interstate child support awards is the chapter's purpose and focal point; the duties and powers of the responding tribunal relate to the goal of enforcing child support orders. *Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

### Visitation.

A chancellor may not consider collateral matters, including visitation, when faced with the issue of enforcement of child support under the act. *Office of Child Support Enforcement v. Clemmons*, 65 Ark. App. 84, 984 S.W.2d 837 (1999).

## 9-17-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 10.

### **9-17-307. Duties of support enforcement agency.**

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 11.

### **CASE NOTES**

#### **Spousal Support.**

Office of Child Support Enforcement has the explicit authority to enforce spousal support orders. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

When a decree was entered in Germany

as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of husband's obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

### **9-17-308. Duty of prosecuting attorney.**

If the prosecuting attorney determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the prosecuting attorney may provide those services directly to the individual.

**History.** Acts 1993, No. 468, § 1.



**9-17-309. Private counsel.**

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

**History.** Acts 1993, No. 468, § 1.

**9-17-310. Duties of state information agency.**

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is the state information agency under this chapter.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

**History.** Acts 1993, No. 468, § 1.

**9-17-311. Pleadings and accompanying documents.**

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under § 9-17-312 (Nondisclosure of information in exceptional circumstances), the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the require-

ments imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

**History.** Acts 1993, No. 468, § 1.

### **9-17-312. Nondisclosure of information in exceptional circumstances.**

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

**History.** Acts 1993, No. 468, § 1.

### **9-17-313. Costs and fees.**

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under article 6 (Enforcement and modification of support order after registration) of this chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

**History.** Acts 1993, No. 468, § 1.

### **9-17-314. Limited immunity of petitioner.**

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter

committed by a party while present in this state to participate in the proceeding.

**History.** Acts 1993, No. 468, § 1.

### **9-17-315. Nonparentage as defense.**

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

**History.** Acts 1993, No. 468, § 1.

### **9-17-316. Special rules of evidence and procedure.**

(a) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten (10) days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.



(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

**History.** Acts 1993, No. 468, § 1.

### CASE NOTES

#### **Affidavits.**

Although subsection (b) of this section renders the affidavit admissible, it does not automatically admit such affidavit. It must be proffered. *State v. Rogers*, 50 Ark. App. 108, 902 S.W.2d 243 (1995).

**Cited:** *Davis v. Child Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996).

### **9-17-317. Communications between tribunals.**

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

**History.** Acts 1993, No. 468, § 1.

### **9-17-318. Assistance with discovery.**

A tribunal of this state may:

- (1) request a tribunal of another state to assist in obtaining discovery; and
- (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

**History.** Acts 1993, No. 468, § 1.

### **9-17-319. Receipt and disbursement of payments.**

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

**History.** Acts 1993, No. 468, § 1.

## ARTICLE 4

### ESTABLISHMENT OF SUPPORT ORDER

#### SECTION.

9-17-401. Petition to establish support order.

**9-17-401. Petition to establish support order.**

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

(1) the individual seeking the order resides in another state; or  
(2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

(1) the respondent has signed a verified statement acknowledging parentage;

(2) the respondent has been determined by or pursuant to law to be the parent; or

(3) there is other clear and convincing evidence that the respondent is the child's parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 9-17-305 (Duties and powers of responding tribunal).

**History.** Acts 1993, No. 468, § 1.

**CASE NOTES**

**Cited:** Davis v. Child Support Enforcement Unit, 326 Ark. 677, 933 S.W.2d 798 (1996).

**ARTICLE 5****DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION****SECTION.**

- 9-17-501. Employer's receipt of income-withholding order of another state.  
9-17-502. Employer's compliance with income-withholding order of another state.  
9-17-503. Compliance with multiple income-withholding orders.

**SECTION.**

- 9-17-504. Immunity from civil liability.  
9-17-505. Penalties for noncompliance.  
9-17-506. Contest by obligor.  
9-17-507. Administrative enforcement of orders.

**9-17-501. Employer's receipt of income-withholding order of another state.**

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 12.

**9-17-502. Employer's compliance with income-withholding order of another state.**

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) of this section and § 9-17-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child support payment.

**History.** Acts 1997, No. 1063, § 12.

**Publisher's Notes.** Former § 9-17-502 has been renumbered as § 9-17-507.

**9-17-503. Compliance with multiple income-withholding orders.**

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.



**History.** Acts 1997, No. 1063, § 12.

### **9-17-504. Immunity from civil liability.**

An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

**History.** Acts 1997, No. 1063, § 12.

### **9-17-505. Penalties for noncompliance.**

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

**History.** Acts 1997, No. 1063, § 12.

### **9-17-506. Contest by obligor.**

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 9-17-604 (Choice of law) applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income-withholding order; and

(3) the person or agency designated to receive payments in the income-withholding order or if no person or agency is designated, to the obligee.

**History.** Acts 1997, No. 1063, § 12.

### **9-17-507. Administrative enforcement of orders.**

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 12.

**Publisher's Notes.** This section was formerly codified as § 9-17-502.

ARTICLE 6

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

Part 1. Registration and Enforcement of Support Order

SECTION.

- 9-17-601. Registration of order for enforcement.
- 9-17-602. Procedure to register order for enforcement.
- 9-17-603. Effect of registration for enforcement.
- 9-17-604. Choice of law.

Part 2. Contest of Validity or Enforcement

- 9-17-605. Notice of registration of order.
- 9-17-606. Procedure to contest validity or enforcement of registered order.
- 9-17-607. Contest of registration or enforcement.
- 9-17-608. Confirmed order.

Part 3. Registration and Modification of Child-Support Order

SECTION.

- 9-17-609. Procedure to register child-support order of another state for modification.
- 9-17-610. Effect of registration for modification.
- 9-17-611. Modification of child-support order of another state.
- 9-17-612. Recognition of order modified in another state.
- 9-17-613. Jurisdiction to modify child support of another state when individual parties reside in this state.
- 9-17-614. Notice to issuing tribunal of modification.

PART 1 — REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

**Publisher's Notes.** Part A of this article was redesignated as Part 1 by Acts 1997, No. 1063, § 20.

9-17-601. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

**History.** Acts 1993, No. 468, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

9-17-602. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the appropriate circuit court in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two (2) copies, including one (1) certified copy, of all orders to be registered, including any modification of an order;

(3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state not exempt from execution; and

(5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one (1) copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

**History.** Acts 1993, No. 468, § 1.

## CASE NOTES

### ANALYSIS

No Out-of-State Judgment Required.  
Not Followed.

#### No Out-of-State Judgment Required.

Enforcement of decree granted; petitioner was not required to obtain a judgment for arrearages in the home state before seeking enforcement in Arkansas. Office of Child Support Enforcement v. Troxel, 326 Ark. 524, 931 S.W.2d 784 (1996).

### Not Followed.

Because the Arkansas Supreme Court determined that the Uniform Interstate Family Support Act, § 9-17-101 et seq., applied to a case involving the modification of child support, an appellate court was required to reverse a circuit court's decision where the registration requirements for a foreign decree under this section were not followed. Mathews v. Mathews, 98 Ark. App. 30, 249 S.W.3d 840 (2007).

## 9-17-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.



(c) Except as otherwise provided in article 6 of this chapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

**History.** Acts 1993, No. 468, § 1.

### CASE NOTES

#### Modification of Order.

Chancellor erred in modifying a Florida child support order where none of the requirements of § 9-17-611 or subsection (c) of this section were met. *Halter v.*

*Halter*, 60 Ark. App. 189, 959 S.W.2d 761 (1998).

**Cited:** Office of Child Support Enforcement v. Wood, 373 Ark. 595, 285 S.W.3d 599 (2008).

### 9-17-604. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

**History.** Acts 1993, No. 468, § 1.

### CASE NOTES

#### ANALYSIS

In General.  
Construction.  
Test.

#### In General.

Counsel's mistaken stipulation to a statute of limitations that barred child support collection did not warrant relief under Ark. R. Civ. P. 60(a). Office of Child Support Enforcement v. Pyron, 363 Ark. 521, 215 S.W.3d 637 (2005).

#### Construction.

Chancellor could not retroactively apply this section so as to breathe life into a dormant judgment, but the judgment was nevertheless entitled to enforcement under §§ 16-56-202 and 16-56-203 [repealed]. *Durham v. Arkansas Dep't of Human Services/Child Support Enforcement Unit*, 322 Ark. 789, 912 S.W.2d 412 (1995).

Section 9-14-236 provides that the statute of limitations for child support now commences with an initial order of support and extends until a child reaches the age of twenty-three; however, any cause of action for child-support arrearages accruing prior to March 29, 1986, is barred.

*King v. State, Office of Child Support Enforcement*, 58 Ark. App. 298, 952 S.W.2d 180 (1997).

Trial court properly found that father met his burden of proof for purposes of contesting the registration of a 1979 Indiana child support order based on the 10-year statute of limitations in Ind. Code § 34-11-2-10 where the son turned 18 on June 30, 1991; any action to enforce the child support obligation had to have been brought by June 2001 as the appropriate statute of limitations to apply was that of Indiana. Office of Child Support Enforcement v. Reagan, 89 Ark. App. 262, 202 S.W.3d 10 (2005).

#### Test.

Determining the longer of two statutes of limitation requires a two-step analysis; first, the court must consider whether there are differing limitations on the time that a custodial parent or child of majority may initiate a proceeding to collect support arrearages and second, the court must look at the longer of the two statutes allowing how far back collection of support arrearages is allowed. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

**Cited:** *Clemmons v. Office of Child Support Enforcement*, 72 Ark. App. 443, 37 S.W.3d 687 (2001).

## PART 2 — CONTEST OF VALIDITY OR ENFORCEMENT

**Publisher's Notes.** Part B of this Article was redesignated as Part 2 by Acts 1997, No. 1063, § 20.

### 9-17-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearages.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state, § 16-110-401 et seq.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 13, 14.

## CASE NOTES

### Constitutionality.

The notice and hearing procedures set out in §§ 9-17-605 — 9-17-607 do not contravene the due process guarantees of

the United States Constitution. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

### 9-17-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty (20) days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an

allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 9-17-607 (Contest of registration or enforcement).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 15, 16.

## CASE NOTES

### ANALYSIS

Constitutionality.

In General.

Failure to Contest Registration.

Request for Hearing.

#### **Constitutionality.**

The notice and hearing procedures set out in §§ 9-17-605 — 9-17-607 do not contravene the due process guarantees of the United States Constitution. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

#### **In General.**

Under this section, the only method for contesting the validity of a foreign support order is to request a hearing within 20 days after notice of registration. This requirement takes precedence over the Arkansas Rules of Civil Procedure because the Uniform Interstate Family Support Act creates a special registration proceeding for foreign support orders. *State of*

*Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

#### **Failure to Contest Registration.**

The failure of the obligor parent to contest the registration of a Texas decree or to request a hearing within 20 days after he received notice of its registration barred his defense to its enforcement. *Office of Child Support Enforcement v. Neely*, 73 Ark. App. 198, 41 S.W.3d 423 (2001).

#### **Request for Hearing.**

The appellee would not be barred from presenting defenses in a contest to the validity of a registered order where he was given conflicting information about the appropriate course of action to take in responding to the proceedings against him and it would not have been unreasonable for him to believe that all of the actions required by the summons and the notice of registration had been taken, albeit by another party. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

## **9-17-607. Contest of registration or enforcement.**

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one (1) or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;



(5) there is a defense under the law of this state to the remedy sought;

(6) full or partial payment has been made; or

(7) the statute of limitation under § 9-17-604 (Choice of law) precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

**History.** Acts 1993, No. 468, § 1.

### CASE NOTES

#### ANALYSIS

Constitutionality.

Burden of Proof.

#### Constitutionality.

The notice and hearing procedures set out in §§ 9-17-605 — 9-17-607 do not contravene the due process guarantees of the United States Constitution. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

#### Burden of Proof.

Trial court properly found that father met his burden of proof for purposes of

contesting the registration of a 1979 Indiana child support order based on the 10-year statute of limitations in Ind. Code § 34-11-2-10 where the son turned 18 on June 30, 1991; any action to enforce the child support obligation had to have been brought by June 2001 and, because the action in Arkansas was not brought until October 2003, it was barred by the statute of limitations. *Office of Child Support Enforcement v. Reagan*, 89 Ark. App. 262, 202 S.W.3d 10 (2005).

**Cited:** *Pulaski County Child Support Enforcement Unit v. Norem*, 328 Ark. 546, 944 S.W.2d 846 (1997); *Halter v. Halter*, 60 Ark. App. 189, 959 S.W.2d 761 (1998).

### 9-17-608. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

**History.** Acts 1993, No. 468, § 1.

### PART 3 — REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER

**Publisher's Notes.** Part C of this Article was redesignated as Part 3 by Acts 1997, No. 1063, § 20.

**9-17-609. Procedure to register child-support order of another state for modification.**

A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another state shall register that order in this state in the same manner provided in part 1 of this article, if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 17.

**9-17-610. Effect of registration for modification.**

A tribunal of this state may enforce a child-support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of § 9-17-611 (Modification of child-support order of another state) have been met.

**History.** Acts 1993, No. 468, § 1.

**9-17-611. Modification of child-support order of another state.**

(a) After a child-support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if § 9-17-613 does not apply and after notice and hearing it finds that:

(1) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child-support order.

(b) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state. If two (2) or more tribunals have issued child-support orders for the same obligor and child, the order that controls and must be so recognized under § 9-17-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child-support order issued in another state, a tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

**History.** Acts 1993, No. 468, § 1; 1997, No. 1063, § 18.

## CASE NOTES

### ANALYSIS

Construction.

Modification of Order.

#### **Construction.**

Under the former Revised Uniform Reciprocal Enforcement of Support Act, which was repealed and replaced by the Uniform Interstate Enforcement of Support Act, an order filed by an Arkansas court that imposes a child support obligation different from the obligation originally imposed by the sister state does not change or modify the sister state's decree, absent express words of nullification. *Jefferson County Child Support Enforcement Unit v. Hollands*, 327 Ark. 456, 939 S.W.2d 302 (1997).

#### **Modification of Order.**

Chancellor erred in modifying a Florida child support order where none of the requirements of § 9-17-603(c) or this section were met. *Halter v. Halter*, 60 Ark. App. 189, 959 S.W.2d 761 (1998); *Office of Child Support Enforcement v. Neely*, 73 Ark. App. 198, 41 S.W.3d 423 (2001).

Trial court was not required to exercise its jurisdiction over the Office of Child Support Enforcement's petition to increase the amount of child support to be paid by the father; under subsection (a) of this section, the trial court "may" modify an order but is not required to modify such an order. *Office of Child Support Enforcement v. Wood*, 373 Ark. 595, 285 S.W.3d 599 (2008).

## **9-17-612. Recognition of order modified in another state.**

A tribunal of this state shall recognize a modification of its earlier child-support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

**History.** Acts 1993, No. 468, § 1.



**9-17-613. Jurisdiction to modify child support of another state when individual parties reside in this state.**

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child-support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of articles 1 and 2 of this chapter, this article, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this chapter do not apply.

**History.** Acts 1997, No. 1063, § 19.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Recent Development, Domestic Relations: Child Support Decrees — Uniform Enforcement of Foreign Judgments Act Mathews v. Mathews, 59 Ark. L. Rev. 1005.

**CASE NOTES****ANALYSIS**

Applicability.  
Application.

**Applicability.**

This section did apply where both parties resided in the same state; thus, the jurisdictional issue on which the court of appeals certified the appeal to the Arkansas Supreme Court was an inappropriate basis for certification, and the matter was remanded to the court of appeals for consideration of the parties' arguments. Mathews v. Mathews, 368 Ark. 252, 244 S.W.3d 660 (2006).

**Application.**

Because the Arkansas Supreme Court determined that the Uniform Interstate Family Support Act, § 9-17-101 et seq., applied to a case involving the modification of child support, an appellate court was required to reverse a circuit court's decision where the registration requirements for a foreign decree under § 9-17-602 were not followed. Mathews v. Mathews, 98 Ark. App. 30, 249 S.W.3d 840 (2007).

**9-17-614. Notice to issuing tribunal of modification.**

Within thirty (30) days after issuance of a modified child-support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

**History.** Acts 1997, No. 1063, § 19.

**ARTICLE 7****DETERMINATION OF PARENTAGE**

## SECTION.

9-17-701. Proceeding to determine parentage.

**9-17-701. Proceeding to determine parentage.**

(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply the procedural and substantive law of this state and the rules of this state on choice of law.

**History.** Acts 1993, No. 468, § 1.

**Publisher's Notes.** The Revised Uniform Reciprocal Enforcement of Support Act, referred to in this section, was re-

pealed by Acts 1993, No. 468, § 8. The act had previously been codified as § 9-14-301 et seq.

**ARTICLE 8****INTERSTATE RENDITION**

## SECTION.

9-17-801. Grounds for rendition.

9-17-802. Conditions of rendition.

**9-17-801. Grounds for rendition.**

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The Governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

**History.** Acts 1993, No. 468, § 1.

**9-17-802. Conditions of rendition.**

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the Governor of this state may require a prosecutor of this state to demonstrate that at least sixty (60) days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the Governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

**History.** Acts 1993, No. 468, § 1.

**Publisher's Notes.** The Revised Uniform Reciprocal Enforcement of Support Act, referred to in this section, was re-

pealed by Acts 1993, No. 468, § 8. The act had previously been codified as § 9-14-301 et seq.

**ARTICLE 9**

**MISCELLANEOUS PROVISIONS**

SECTION.

9-17-901. Uniformity of application and construction.

SECTION.

9-17-902. Short title.

9-17-903 — 9-17-905. [Reserved.]

**9-17-901. Uniformity of application and construction.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the Uniform Interstate Family Support Act.

**History.** Acts 1993, No. 468, § 1.



**9-17-902. Short title.**

This chapter may be cited as the Uniform Interstate Family Support Act.

**History.** Acts 1993, No. 468, § 1.

**9-17-903 — 9-17-905. [Reserved.]**

**Publisher's Notes.** These provisions of the Uniform Interstate Family Support Act were not enacted in Arkansas.

**CHAPTER 18****QUALIFIED DOMESTIC RELATIONS ORDERS****SECTION.**

9-18-101. Definitions.

9-18-102. Orders to reach retirement benefits.

**SECTION.**

9-18-103. Orders to reach public employees' retirement benefits.

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**RESEARCH REFERENCES**

**A.L.R.** What constitutes order made pursuant to state domestic law for purposes of qualified domestic relations order exemption to antialienation provision of ERISA. 79 A.L.R.4th 1081.

**C.J.S.** 7 C.J.S., Atty & C, § 33.

12A C.J.S., Bus Trsts, § 23.

27A C.J.S., Divorce, §§ 1-269.

55 C.J.S., Marriage, § 55.

62 C.J.S., Mun Corp, § 729.

70 C.J.S., Pensions, §§ 88, 94 et seq., 104.

**CASE NOTES**

**Cited:** Tyer v. Tyer, 56 Ark. App. 1, 937 S.W.2d 667 (1997).

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**9-18-101. Definitions.**

As used in this chapter:

(1) "Circuit court" means the equity court of each county in the State of Arkansas created under § 16-13-301 [repealed];

(2) "Domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that relates to the provisions for child support, alimony payment, or marital property rights to a spouse, former spouse, child, or other dependents of a participant under Arkansas law;

(3) "Participant" means any person or member of a retirement plan;

(4) "Qualified domestic relations order" means a domestic relations order;

(A) Which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant's retirement plan;

(B) Which clearly specifies the name and last known mailing address, if any, of the participant and the name and mailing address of each alternate payee covered by the order, the amount or percentage of the participant's benefits to be paid by the plan to each alternate payee or the manner in which the amount or percentage is determined, the number of payments or period of time to which the order applies, and each retirement plan to which the order applies; and

(C) Which does not require the retirement plan to provide any type or form of benefit, or pay options not otherwise available under the plan, does not require the plan to provide increased benefits, and does not require the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and

(5) "Retirement plan" means any retirement plan, private or public, including, but not limited to:

(A) The Arkansas Teacher Retirement System;

(B) The State Police Retirement System;

(C) The Arkansas State Highway Employees' Retirement System;

(D) The Arkansas Public Employees' Retirement System;

(E) The Arkansas Judicial Retirement System; and

(F) Other state-supported alternate retirement systems.

**History.** Acts 1993, No. 1143, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

## 9-18-102. Orders to reach retirement benefits.

(a) Notwithstanding §§ 24-3-212 [repealed] and 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the circuit courts of Arkansas are empowered to enter qualified domestic relations orders to reach any and all retirement annuities and benefits of any retirement plan.

(b) The qualified domestic relations order of the circuit court is authorized to specify that a designated percent of a fractional interest on any retirement benefit payment may be paid to an alternate payee.

**History.** Acts 1993, No. 1143, § 2; 1995, No. 644, § 1.

## CASE NOTES

**Timeliness.**

The omission of a provision dividing the husband's retirement plan from a divorce decree was not a "clerical error" within the meaning of ARCP 60(a); the chancellor lacked authority to amend the divorce

decree to include a provision to divide the retirement plan more than ninety days after entry of the original divorce decree. *Tyer v. Tyer*, 56 Ark. App. 1, 937 S.W.2d 667 (1997).

### 9-18-103. Orders to reach public employees' retirement benefits.

(a) Notwithstanding §§ 24-3-212 [repealed] and 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the Arkansas Teacher Retirement System, the State Police Retirement System, the Arkansas State Highway Employees' Retirement System, the Arkansas Public Employees' Retirement System, the Arkansas Judicial Retirement System, and any other state-supported retirement system shall comply with any qualified domestic relations order as defined in this chapter.

(b) The boards of trustees of the retirement systems shall promulgate rules and regulations to implement this chapter and shall adopt a uniform legal form, as approved by the Legislative Council, for use in preparing qualified domestic relations orders for each retirement plan.

**History.** Acts 1993, No. 1143, § 3.

## CHAPTER 19

### UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. JURISDICTION.
3. ENFORCEMENT.
4. MISCELLANEOUS PROVISIONS.

**A.C.R.C. Notes.** Acts 1999, No. 669, § 401, provided: "A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of this Act is governed by the law in effect at the time the motion or other request was made."

**Publisher's Notes.** As to jurisdiction of circuit court over certain proceedings, see § 9-27-306.

For comments regarding the former

Uniform Child Custody Jurisdiction Act, see Commentaries Volume B.

Acts 1999, No. 668, § 406, provided: "Transitional Provision. A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of this Act is governed by the law in effect at the time the motion or other request was made."

**Cross References.** Custody of child born outside of marriage, § 9-10-113.



## RESEARCH REFERENCES

**A.L.R.** Significant connection jurisdiction of court under § 3(a)(2) of the UCCJA AND PKPA. 5 A.L.R.5th 550.

Abandonment and emergency jurisdiction of court under section 3(a)(3) of the UCCJA and the PKPA. 5 A.L.R.5th 788.

Home state jurisdiction of court under § 3(a)(1) of the UCCJA or PKPA. 6 A.L.R.5th 1.

Default jurisdiction of court under § 3(a)(4) of the UCCJA or PKPA. 6 A.L.R.5th 69.

Continuity of residence as a factor in contest between parent and non-parent for custody of child who has been residing with non-parent — modern status. 15 A.L.R.5th 692.

Parties' misconduct as ground for declining jurisdiction under § 8 of the UCCJA. 16 A.L.R.5th 650.

Pending proceeding in another state as ground for declining jurisdiction under § 6(a) of the UCCJA or the PKPA. 20 A.L.R.5th 700.

Inconvenience of forum as ground for declining jurisdiction under § 7 of the UCCJA. 21 A.L.R.5th 396.

Recognition and enforcement of out-of-state custody decree under § 13 of the UCCJA and the PKPA. 40 A.L.R.5th 227.

Significant connection jurisdiction of court to modify foreign child custody decree under §§ 3(a)(2) and 14(b) of the UCCJA and the PKPA. 67 A.L.R.5th 1.

Home state jurisdiction of court to modify foreign child custody decree under §§ 3(a)(1) and 14(a)(2) of the UCCJA and

the PKPA. 72 A.L.R.5th 249.

When does a court which rendered a previous child custody decree decline to assume jurisdiction to modify that decree within the meaning of § 14(a)(1) of the UCCJA and PKPA. 73 A.L.R.5th 185.

Abandonment jurisdiction of court under §§ 3(a)(3)(I) and 14(a) of the UCCJA and the PKPA to protect the interests of the child notwithstanding the existence of a prior valid custody decree rendered by a second state. 78 A.L.R.5th 465.

**Ark. L. Notes.** Brummer, Statutory Primer: The Uniform Interstate Family Support Act, 1994 Ark. L. Notes 77.

**Ark. L. Rev.** Leflar, Conflict of Laws: Arkansas 1978-82, 36 Ark. L. Rev. 191.

Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

Baron, Federal Preemption in the Resolution of Child Custody Jurisdiction Disputes, 45 Ark. L. Rev. 885.

**U. Ark. Little Rock L.J.** Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Survey of Arkansas Law, Family Law, 5 U. Ark. Little Rock L.J. 143.

Survey of Arkansas Law: Family Law, 6 U. Ark. Little Rock L.J. 159.

Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

Arkansas Law Survey, Morgan, Family Law, 8 U. Ark. Little Rock L.J. 169.

Note, Parental Kidnapping in Arkansas, etc., 10 U. Ark. Little Rock L.J. 69.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 207.

## CASE NOTES

## ANALYSIS

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**Purpose.**

A former version of this chapter was solely for custody battles between resi-

dents of different states, and it did not confer jurisdiction on the chancery court to enter an order for support of minor children absent a divorce proceeding. *Amos v. Amos*, 282 Ark. 532, 669 S.W.2d 200 (1984).

### **Applicability.**

A former version of this chapter did not apply where, at the time the petition was filed in the juvenile court of Garland County, the divorce action in another state had not been commenced. *Leinen v. Arkansas Dep't of Human Servs.*, 47 Ark. App. 156, 886 S.W.2d 895 (1994).

A former version of this chapter did not apply where a proceeding is commenced in another state after the proceeding in this state had begun. *Blocker v. Blocker*, 57 Ark. App. 218, 944 S.W.2d 552 (1997).

The Uniform Child Custody Jurisdiction and Enforcement Act has no application to intrastate custody disputes. *Seamans v. Seamans*, 73 Ark. App. 27, 37 S.W.3d 693 (2001).

### **Abductions and Removals.**

Custody proceeding in state to which children were removed after abduction by parent violated the purposes of a former version of this chapter to deter abductions and other unilateral removals of children undertaken to obtain custody awards. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

### **Best Interest of Child.**

The Arkansas court should not automatically defer to a prior out-of-state decree under a former version of this chapter, but instead should consider the interests of the child. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Although a foreign court had continuing jurisdiction in child custody matters following a divorce decree so as to preclude the exercise of jurisdiction by an Arkansas court under this section, an Arkansas court could still exercise jurisdiction as to custody under former § 9-13-208(b) [repealed] (now see § 9-19-101 et seq.) if the child's interest so required. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Where the evidence in an interstate custody dispute showed that the children had never been to Arkansas and that the only contact with Arkansas was that the plaintiff father had moved to Arkansas,

the chancellor correctly found that Arkansas did not have jurisdiction in the matter. *LeGuin v. Caswell*, 277 Ark. 20, 638 S.W.2d 674 (1982).

Where divorce was granted in Arkansas and mother and children subsequently moved out-of-state, an Arkansas court had jurisdiction to hear the evidence on the issue of whether or not a modification of resident father's visitation rights was in order since the minor children and father had a significant connection in Arkansas and there was available in Arkansas substantial evidence concerning the minor children's present or future care, protection, training and personal relationships in regard to the visitation rights; the Arkansas court was in a much better position to obtain the facts which had bearing on the fitness of father and the best interest of the minor children in regard to any change in visitation. *Brown v. Brown*, 10 Ark. App. 251, 663 S.W.2d 190 (1984).

Arkansas court had no jurisdiction to modify visitation rights under out-of-state judgment where neither the child nor her mother had any significant connection with Arkansas and there was nothing in the record to indicate or suggest that it was in the child's best interest for the trial court to assume jurisdiction to modify the visitation order made by the Alabama court. *Hogan v. Durgan*, 11 Ark. App. 172, 668 S.W.2d 57 (1984).

An Arkansas chancery court had jurisdiction to award custody of a child with minimal connections to Arkansas as it was in the best interest of the child. *Hilburn v. Hilburn*, 287 Ark. 50, 696 S.W.2d 718 (1985).

In a divorce action the court correctly found that it did have jurisdiction to determine custody of a child where it was shown that the child and at least one parent had significant connections with this state and there was available in the state substantial evidence concerning the child's present or future care, training and personal relationships. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

### **Custody Decree Determination.**

An emergency temporary custody order is nonappealable for lack of finality. *Jones v. Jones*, 41 Ark. App. 146, 852 S.W.2d 325 (1993).



**Emergency.**

Evidence was insufficient to establish an emergency pursuant to a former version of this chapter, but sufficient to justify the Arkansas court in preempting the continuing jurisdiction of another state as the "home state" court. *Caskey v. Pickett*, 274 Ark. 383, 625 S.W.2d 473 (1981).

Jurisdiction predicated on a former version of this chapter was to be used only in extreme or extraordinary situations where the immediate health and welfare of the child was at stake. *Caskey v. Pickett*, 274 Ark. 383, 625 S.W.2d 473 (1981).

Emergency powers under a former version of this chapter were limited; emergency jurisdiction should not be used to modify a custody order permanently but may be used to enter a temporary order giving a party custody only for as long as it takes to travel with the child to the proper forum to seek a permanent modification of custody, usually the home state. *Murphy v. Danforth*, 323 Ark. 482, 915 S.W.2d 697 (1996).

Where petitioners asked the Arkansas court to make them temporary guardians and, after a full hearing, to make them the permanent guardians, in effect seeking a permanent change in custody under the exercise of emergency jurisdiction, and made no suggestion that all of the evidence could not be produced in Texas, and filed their petition in intervention there, Arkansas court correctly refused to exercise emergency jurisdiction. *Murphy v. Danforth*, 323 Ark. 482, 915 S.W.2d 697 (1996).

A former version of this chapter allowed jurisdiction to decide child custody matters based on an emergency and could only be used in extreme or extraordinary situations where the immediate health and welfare of the child was at stake; these emergency powers were limited and should not be used to permanently modify a custody order, but should only be used to give a party custody for as long as it takes to travel with the child to the proper forum to seek permanent modification. *Moore v. Richardson*, 332 Ark. 255, 964 S.W.2d 377 (1998).

Emergency jurisdiction did not exist under a former version of this chapter where the mother had custody of the children at issue under a sister state court order, the order restricted the father's visitation with the children to his sister's house, and

there was no evidence that the children were in any danger from the father's brother. *Perez v. Tanner*, 332 Ark. 356, 965 S.W.2d 90 (1998).

**Evidence.**

Arkansas court did not err in modifying the custody order in mother's absence where there was no proceeding on the matter pending in another jurisdiction at the time and since evidence showed that Arkansas was not an inconvenient forum under this section. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

Statement in settlement agreement, that both parties "anticipated" that they would move to Ohio sometime in 1988 did not constitute an agreement between the parties as to the forum in which to litigate future custody disputes. *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

**Federal Legislation.**

A former version of this chapter and the federal Parental Kidnapping Prevention Act needed to be read in conjunction, and where they conflicted, the preemptive federal act controlled. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987).

**Home State.**

Evidence sufficient to show that Missouri was clearly the home state of the parties' children. *Biggers v. Biggers*, 11 Ark. App. 62, 666 S.W.2d 714 (1984).

Where children's home state was not Arkansas, Arkansas trial court had no jurisdiction to decide child custody. *Biggers v. Biggers*, 11 Ark. App. 62, 666 S.W.2d 714 (1984); *Fletcher v. Fletcher*, 20 Ark. App. 190, 726 S.W.2d 684 (1987).

In determining a child custody action a court could correctly find jurisdiction despite the fact that Arkansas had not been the children's home state for at least six months. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Where the children resided in this state with the parent seeking modification of the visitation provisions far longer than the six months mentioned in a former version of this chapter, this state was their "home state," and since there was no evidence of any pending custody litigation in the other state or any state other than this state, this state had jurisdiction to modify the divorce decree issued in an-



other state. *Bell v. Bell*, 288 Ark. 468, 705 S.W.2d 891 (1986).

The appeal from the order of the chancellor which held that this state was the "home state" of the children under the uniform act, and that therefore the court was not required to give full faith and credit to the Oklahoma award of custody, was dismissed for want of an appealable order where the proof of custody was not completed and the order of custody was not entered. *Sandlin v. Sandlin*, 290 Ark. 366, 719 S.W.2d 433 (1986).

Arkansas held not home state. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987); *Fletcher v. Fletcher*, 20 Ark. App. 190, 726 S.W.2d 684 (1987).

The definition of home state used in the Parental Kidnapping Prevention Act is identical to that used in the former Uniform Child Custody Jurisdiction Act. *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

When chancellor entered decree of divorce providing for joint custody, in the sense that the actual physical custody of the child would be shared by the parties on an equal time basis, Arkansas remained the home state of the child, and this status was not affected by the fact that the parties did not perfectly observe the provisions providing for transferring the child back and forth on a calendar month basis. To the extent that the child spent more time in Ohio than in Arkansas during the year, the time spent with her father in excess of that provided by the decree was in the nature of a "temporary absence" within the meaning of the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(b)(4). *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

### **Improper Removal.**

Refusal of jurisdiction was mandatory under a former version of this chapter if the party seeking jurisdiction has improperly removed or retained the child, misrepresents to the court the whereabouts of the other party and fails to give information regarding prior custody actions. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Where mother brought child from another jurisdiction to Arkansas without the knowledge or consent of the court-appointed custodian, it was improper for an Arkansas court to modify an order of the

other jurisdiction and place custody of the child in the mother since the other jurisdiction had adopted the former Uniform Child Custody Jurisdiction Act and was exercising its jurisdiction in conformity with an act substantially the same as Arkansas' former Act. *Rodriguez v. Saucedo*, 3 Ark. App. 42, 621 S.W.2d 874 (1981).

### **Inconvenient Forum.**

A court may decline to exercise its jurisdiction on a custody determination where it finds it to be an inconvenient forum, taking into account whether another state was the child's home state or has a closer connection with the child and parent, or that evidence of present and future care is more readily available in another state. *Mellinger v. Mellinger*, 26 Ark. App. 233, 764 S.W.2d 52 (1989).

### **Judicial Notice.**

Court did not err in taking judicial notice of the law of another state in determining if it was in substantial conformity with Arkansas law, as required by the former Uniform Child Custody Jurisdiction Act, since the act did not require a party to plead a sister state's law and it was clear from the pleadings that the other state's law was in issue. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

### **Jurisdiction.**

Under a former version of this chapter it was a matter within the trial court's discretion whether to decline to exercise its jurisdiction when the parties have agreed, in a settlement agreement, on another, appropriate forum. *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

Despite a jurisdictional provision in the consent order, the chancellor acted well within his discretion in declining jurisdiction over the issue of custody based on evidence that the child's home state was not Arkansas. *Snisky v. Whisenhunt*, 44 Ark. App. 13, 864 S.W.2d 875 (1993).

The juvenile court properly found that California was the place of the parties' residence and the location of greater available evidence regarding the child's protection and personal relationships, and the court did not abuse its discretion in declining to exercise jurisdiction. *Leinen*

v. Arkansas Dep't of Human Servs., 47 Ark. App. 156, 886 S.W.2d 895 (1994).

### **Jurisdiction of Another State.**

Where child was in Arkansas only for visitation with her father in compliance with an out-of-state court order and the record did not reflect that the foreign court was without jurisdiction, evidence was insufficient to preempt continuing jurisdiction of another state. *Caskey v. Pickett*, 274 Ark. 383, 625 S.W.2d 473 (1981).

Where a custody suit was filed in a chancery court in this state while a divorce suit had been filed in a Texas county court and a custody suit was pending in another Texas county court, it was incumbent on the chancery court, before proceeding to a final decree, to enter into direct communication with one or both Texas courts to determine, in accordance with the former Uniform Child Custody Jurisdiction Act, which was the better forum to decide custody. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

Where the father sought affirmative relief in the chancery court in the form of a stay of the proceedings so that the courts of Texas and this state could have direct communication in accordance with the former Uniform Child Custody Jurisdiction Act, he could not argue that by so doing he remained beyond the jurisdictional powers of the chancery court. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

Exercise of jurisdiction by Arkansas court was improper where the court disregarded the fact that another state remained the couple's home state for jurisdictional purposes. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987).

A court may decline to exercise its jurisdiction on a custody determination where it finds it to be an inconvenient forum, taking into account whether another state was the child's home state or has a closer connection with the child and parent, or that evidence of present and future care is more readily available in another state. *Mellinger v. Mellinger*, 26 Ark. App. 233, 764 S.W.2d 52 (1989).

Where paternal grandparents were granted legal guardianship of child by Tennessee court and child resided with them in Tennessee continuously from that time, and where at the time Arkansas

court exercised jurisdiction over the child, the Tennessee court had already assumed jurisdiction and entered the guardianship order, the Arkansas court erroneously exercised jurisdiction over the minor. *Elam v. Elam*, 39 Ark. App. 1, 832 S.W.2d 508 (1992).

Although when child's grandmother filed the petition in Oklahoma, the child had lived in Oklahoma only four months, Oklahoma court had jurisdiction to modify the custody order; Arkansas court did not err in according the Oklahoma order full faith and credit. *Smith v. Cotton*, 50 Ark. App. 100, 902 S.W.2d 240 (1995).

The Arkansas chancery court which entered the initial custody and visitation order properly retained continuing jurisdiction of a child custody case under the PKPA and this state's former UCCJA, and the Texas court with jurisdiction over the area where mother and child reside was without jurisdiction to permanently modify the Arkansas court's order even if the facts had shown that there was a need to exercise emergency jurisdiction. *Moore v. Richardson*, 332 Ark. 255, 964 S.W.2d 377 (1998).

### **Modification of Order.**

The court of a state granting custody in the first instance does not retain pending jurisdiction for later modification of custody, irrespective of subsequent developments if the parties and children were living in another state. *Davis v. Davis*, 285 Ark. 403, 687 S.W.2d 843 (1985).

A chancery court which had originally granted the divorce and adjudicated custody rights maintained jurisdiction to modify the custody order on petition of the husband who still lived within the county. *O'Daniel v. Walker*, 14 Ark. App. 210, 686 S.W.2d 805 (1985).

### **Noncompliance.**

Refusal of jurisdiction was mandatory under former § 9-13-208(b) [repealed] (now see § 9-19-101 et seq.) if the party seeking jurisdiction had improperly removed or retained the child, misrepresented to the court the whereabouts of the other party and failed to give information regarding prior custody actions as required by the former section. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).



**Notice.**

Service on wife was adequate where an affidavit of personal service was entered into the record, in which the affiant stated he personally delivered a copy of the home state's summons and temporary order of custody to his wife's father, at his usual place of residence in Arkansas. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987).

An ex parte custody order, without notice, requires prompt notice and an opportunity for the absent party to present proof; before a final custody determination is made, an opportunity to be heard must be given to the contestants under this section, and the matter must be given priority and handled expeditiously under former § 9-13-224 [repealed] (now see § 9-19-101 et seq.). *Lester v. Lester*, 48 Ark. App. 40, 889 S.W.2d 42 (1994).

**Notice of Foreign Judgments.**

Where notice by publication under foreign law was insufficient the Arkansas trial court was not required to give full faith and credit to the foreign custody order nor to defer jurisdiction to the foreign court. *Pawlik v. Pawlik*, 2 Ark. App. 257, 620 S.W.2d 310 (1981).

A foreign court order awarding custody to the mother was not entitled to full faith and credit in the State of Arkansas because of the court's failure to acquire personal jurisdiction over the father by proper service of process. *Cella v. Cella*, 12 Ark. App. 156, 671 S.W.2d 764 (1984).

**Pending Proceedings.**

Arkansas court did not err in modifying custody order in parent's absence where there was no proceeding on the matter pending in another jurisdiction at the time and since Arkansas was not an inconvenient forum. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

Continuing jurisdiction of foreign court in child custody matters subsequent to divorce held to constitute a proceeding pending in another state so that Arkansas court had to defer to the other state. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Since another state had adopted the former Uniform Child Custody Jurisdiction Act and was exercising its jurisdiction in conformity with an act substantially the same as Arkansas' act, the Arkansas

court was precluded by a former version of this chapter from modifying foreign custodial decree. *Rodriguez v. Saucedo*, 3 Ark. App. 42, 621 S.W.2d 874 (1981).

The court of a state granting custody in the first instance does not retain pending jurisdiction for later modification of custody, irrespective of subsequent developments if the parties and children were living in another state. *Davis v. Davis*, 285 Ark. 403, 687 S.W.2d 843 (1985).

Where the children resided in this state with the parent seeking modification of the visitation provisions far longer than the six months mentioned in subdivision (a)(1) of § 9-13-203 [repealed] (now see § 9-19-101 et seq.), this state was their "home state," and since there was no evidence of any pending custody litigation in the other state or any state other than this state, this state had jurisdiction to modify the divorce decree issued in another state. *Bell v. Bell*, 288 Ark. 468, 705 S.W.2d 891 (1986).

Although a custody suit was pending in Texas, the chancery court was not required to dismiss the custody suit filed by the mother a week later where it was not at all evident from the record that the Texas court was exercising jurisdiction "substantially in conformity with" the former Uniform Child Custody Jurisdiction Act, and the father attempted to vest jurisdiction in the Texas court by obtaining custody of the child by subterfuge. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

**Physical Presence of Child.**

Arkansas court had jurisdiction to modify the custody decree under this section since the section grants jurisdiction if the state is the "home state" of the child or if it is in the best interest of the child, and the physical absence of the child is not a bar to jurisdiction. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

**Preemption of Federal Law.**

Under the Parental Kidnapping Prevention Act of 1980 (PKPA), the Arkansas court had exclusive jurisdiction since it was the home state, while under the former Uniform Child Custody Jurisdiction Act (UCCJA), there might have been concurrent jurisdiction because of the "significant connection" and "substantial evidence" provision. When the UCCJA



and the PKPA conflicted, the preemptive federal PKPA controlled. *Atkins v. Atkins*, 308 Ark. 1, 823 S.W.2d 816 (1992).

### Priority of Orders.

An ex parte custody order, without notice, requires prompt notice and an opportunity for the absent party to present proof; before a final custody determination is made, an opportunity to be heard must be given to the contestants under former § 9-13-204 [repealed] (now see § 9-19-101 et seq.), and the matter must be given priority and handled expeditiously under this section. *Lester v. Lester*, 48 Ark. App. 40, 889 S.W.2d 42 (1994).

### Questions of Fact.

Whether a chancery court of this state should exercise its jurisdiction to enter a custodial order under the provisions of this section depends on the resolution of questions of fact. *Knox v. Knox*, 25 Ark. App. 107, 753 S.W.2d 290 (1988).

### Retaining Jurisdiction.

Arkansas court did not abuse its discretion in retaining jurisdiction where Arkansas was found to be the home state of the child and where witnesses were located in both states. *Blocker v. Blocker*, 57 Ark. App. 218, 944 S.W.2d 552 (1997).

### Significant Connection.

Court erred in concluding that a probate court in Jonesboro did not have jurisdiction to decide a guardianship where the parties had a significant connection with Arkansas in 1998, with both living in Jonesboro, and there was substantial evidence concerning the child's care, even though Arkansas did not qualify as the child's home state at that time; the circumstances were sufficient for the Arkansas probate court to have had jurisdiction to establish the guardianship in 1998. *Crosser v. Henson*, 357 Ark. 635, 187 S.W.3d 848 (2004).

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## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

- 9-19-101. Short title.
- 9-19-102. Definitions.
- 9-19-103. Proceedings governed by other law.
- 9-19-104. Application to Indian tribes.
- 9-19-105. Internal application of chapter.
- 9-19-106. Effect of child-custody determination.
- 9-19-107. Priority.

### SECTION.

- 9-19-108. Notice to persons outside state.
- 9-19-109. Appearance and limited immunity.
- 9-19-110. Communication between courts.
- 9-19-111. Taking testimony in another state.
- 9-19-112. Cooperation between courts — Preservation of records.

### 9-19-101. Short title.

This chapter may be cited as the "Uniform Child-Custody Jurisdiction and Enforcement Act".

**History.** Acts 1999, No. 668, § 101.

## RESEARCH REFERENCES

**Ark. L. Notes.** Flaccus, The New Uniform Child Custody Jurisdiction and Enforcement Act and Bankruptcy Discharge of Marital Settlement Obligations, 1999 Ark. L. Notes 41.

**Ark. L. Rev.** Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

## CASE NOTES

## ANALYSIS

Applicability.  
Clean-Up Doctrine.  
Jurisdiction.  
Scope of Act.

**Applicability.**

The former Uniform Child Custody Jurisdiction Act applied to a proceeding by a grandparent for visitation. *Bruner v. Tadlock*, 338 Ark. 34, 991 S.W.2d 600 (1999).

**Clean-Up Doctrine.**

The clean-up doctrine did not allow an Arkansas court to decide issues of child support and alimony after it properly acquired jurisdiction under the former Uniform Child Custody Jurisdiction Act, § 9-13-201 [repealed] et seq., of child custody and visitation issues. *Fox v. Fox*, 68 Ark. App. 281, 7 S.W.3d 339 (1999).

**Jurisdiction.**

In the context of personal jurisdiction in a child custody or guardianship case, personal jurisdiction over a party requires the appellate court to consider whether

Arkansas remains the “home state” as defined by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101, et seq.; because such an analysis necessarily turns upon some fact to be determined by the trial court, a writ of prohibition is not the proper remedy to determine the issue, and the related issue of the trial court’s continuing jurisdiction under § 9-19-202 also involves a similar factual determination. *Finney v. Cook*, 351 Ark. 367, 94 S.W.3d 333 (2002).

**Scope of Act.**

The former Uniform Child Custody Jurisdiction Act, § 9-13-201 [repealed] et seq., is solely for custody disputes between residents of different states and does not confer jurisdiction on the chancery court to enter an order for support of minor children absent a divorce proceeding. *Fox v. Fox*, 68 Ark. App. 281, 7 S.W.3d 339 (1999).

**Cited:** *Ark. Dep’t of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002); *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004); *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

**9-19-102. Definitions.**

In this chapter:

- (1) “Abandoned” means left without provision for reasonable and necessary care or supervision.
- (2) “Child” means an individual who has not attained eighteen (18) years of age.
- (3) “Child-custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
- (4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under subchapter 3 of this chapter.
- (5) “Commencement” means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

**History.** Acts 1999, No. 668, § 102.



## RESEARCH REFERENCES

**A.L.R.** Construction and operation of Uniform Child Custody Jurisdiction and Enforcement Act. 100 A.L.R.5th 1.

## CASE NOTES

## ANALYSIS

Home State.  
Jurisdiction Proper.  
Tribe.

**Home State.**

Under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., the trial court had jurisdiction where the children had not lived with their mother in any state for six consecutive months immediately before the child-custody proceeding commenced and were living with their father in Arkansas at the time those proceedings commenced. *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004).

Trial court erred in assuming jurisdiction over the child-custody determinations where Arkansas was not the home state of the child and Arkansas could not acquire jurisdiction under § 9-19-201(a)(1); the child had no connections to Arkansas, only to California. *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

While matters concerning the modification of child custody were pending in the courts of Louisiana and Arkansas, the Arkansas court acted properly in staying its proceedings and allowing the Louisiana court to dismiss its matter, based on a finding that Arkansas was the children's home state; later, the Arkansas court properly found that it had jurisdiction and that the children had lived in Arkansas for more than six months. *Bridges v. Bridges*, 93 Ark. App. 358, 219 S.W.3d 699 (2005).

Father's contempt citation based on an alleged deprivation of visitation was dismissed as, pursuant to 28 U.S.C.S. § 1738A(b)(4) and this section, Missouri was the child's "home state" due to the

fact that the child had resided there for more than 5 years with the mother; thus, Arkansas was an inconvenient forum for deciding issues relating to visitation and an adoption. *Wilson v. Beckett*, 95 Ark. App. 300, 236 S.W.3d 527 (2006).

Trial court lacked subject matter jurisdiction when it entered an initial child-custody order because the order was not consistent with § 9-19-201; Arkansas was not the home state of a minor child because she was not born there and had never been there. Moreover, the home state had not declined to exercise jurisdiction. *Czupil v. Jernigan*, 103 Ark. App. 132, 286 S.W.3d 753 (2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 792 (Nov. 13, 2008).

**Jurisdiction Proper.**

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of § 9-19-204(b) applied, and Arkansas then became the home state of the children. *Davis v. Arkansas HHS*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

**Tribe.**

Because the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C.S. § 1901 et seq., did not apply to the adoption of the minor child because she was not an "Indian child" as defined in 25 U.S.C.S. § 1903(4), § 9-19-104(a) did not apply to grant Indian child status to the minor child. *Vick v. Cecil (In re A.M.C.)*, 368 Ark. 369, 246 S.W.3d 426 (2007).

**Cited:** Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

**9-19-103. Proceedings governed by other law.**

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

**History.** Acts 1999, No. 668, § 103.

**9-19-104. Application to Indian tribes.**

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying subchapters 1 and 2 of this chapter.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter 3 of this chapter.

**History.** Acts 1999, No. 668, § 104.

**CASE NOTES****Applicability.**

Because the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C.S. § 1901 et seq., did not apply to the adoption of the minor child because she was not an “Indian

child” as defined in 25 U.S.C.S. § 1903(4), subsection (a) of this section did not apply to grant Indian child status to the minor child. *Vick v. Cecil (In re A.M.C.)*, 368 Ark. 369, 246 S.W.3d 426 (2007).

**9-19-105. Internal application of chapter.**

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying subchapters 1 and 2 of this chapter.

(b) Except as otherwise provided in subsection (c) of this section, a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter 3 of this chapter.

(c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

**History.** Acts 1999, No. 668, § 105.

**9-19-106. Effect of child-custody determination.**

A child-custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with

§ 9-19-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

**History.** Acts 1999, No. 668, § 106.

### **9-19-107. Priority.**

If a question of existence or exercise of jurisdiction under this chapter is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

**History.** Acts 1999, No. 668, § 107.

### **9-19-108. Notice to persons outside state.**

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

**History.** Acts 1999, No. 668, § 108.

### **9-19-109. Appearance and limited immunity.**

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

**History.** Acts 1999, No. 668, § 109.



**9-19-110. Communication between courts.**

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**History.** Acts 1999, No. 668, § 110.

**9-19-111. Taking testimony in another state.**

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

**History.** Acts 1999, No. 668, § 111.

**9-19-112. Cooperation between courts — Preservation of records.**

(a) A court of this state may request the appropriate court of another state to:

- (1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

**History.** Acts 1999, No. 668, § 112.

## SUBCHAPTER 2 — JURISDICTION

### SECTION.

- 9-19-201. Initial child-custody jurisdiction.
- 9-19-202. Exclusive, continuing jurisdiction.
- 9-19-203. Jurisdiction to modify determination.
- 9-19-204. Temporary emergency jurisdiction.
- 9-19-205. Notice — Opportunity to be heard — Joinder.

### SECTION.

- 9-19-206. Simultaneous proceedings.
- 9-19-207. Inconvenient forum.
- 9-19-208. Jurisdiction declined by reason of conduct.
- 9-19-209. Information to be submitted to court.
- 9-19-210. Appearance of parties and child.

### 9-19-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in § 9-19-204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has

declined to exercise jurisdiction on the ground that this state is the more appropriate forum under § 9-19-207 or § 9-19-208, and:

(A) the child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under § 9-19-207 or § 9-19-208; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (2), or (3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

**History.** Acts 1999, No. 668, § 201.

## CASE NOTES

### ANALYSIS

Home State.  
Jurisdiction.

#### Home State.

Pursuant to subdivision (a)(4) of this section, the trial court had jurisdiction where the children had not lived with their mother in any state for six consecutive months immediately before the child-custody proceeding commenced and were living with their father in Arkansas at the time those proceedings commenced. *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004).

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of § 9-19-204(b) applied, and Arkansas then became the home state of the children. *Davis v. Arkansas HHS*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

#### Jurisdiction.

Trial court erred in taking jurisdiction pursuant to Uniform Child-Custody Juris-

diction and Enforcement Act (UCCJEA), § 9-19-101 et seq., and awarding custody of a minor child to her father where the only state with which the child had "significant" connections was California; the minor child had been born there, lived in California for over half of her life (except for two brief moves out of state), and lived in California at the time of the hearing. *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

Trial court erred in assuming jurisdiction over the child-custody determinations where, under § 9-19-102, Arkansas was not the home state of the child and Arkansas could not acquire jurisdiction under subdivision (a)(1) of this section; the child had no connections to Arkansas, only to California. *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

Trial court lacked subject matter jurisdiction when it entered an initial child-custody order because the order was not consistent with this section; Arkansas was not the home state of a minor child because she was not born there and had never been there. Moreover, the home state had not declined to exercise jurisdiction. *Czupil v. Jernigan*, 103 Ark. App. 132, 286 S.W.3d 753 (2008), review de-



nied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 792 (Nov. 13, 2008).

**Cited:** Ark. Dep't of Human Servs. v.

Cox, 349 Ark. 205, 82 S.W.3d 806 (2002); West v. West, 362 Ark. 456, 208 S.W.3d 776 (2005).

### 9-19-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in § 9-19-204, a court of this state which has made a child-custody determination consistent with § 9-19-201 or § 9-19-203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 9-19-201.

**History.** Acts 1999, No. 668, § 202.

### CASE NOTES

#### Jurisdiction.

In the context of personal jurisdiction in a child custody or guardianship case, personal jurisdiction over a party requires the appellate court to consider whether Arkansas remains the "home state" as defined by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.; because such an analysis necessarily turns upon some fact to be determined by the trial court, a writ of prohibition is not the proper remedy to determine the issue, and the related issue of the trial court's continuing jurisdiction under this section also involves a similar factual determination. *Finney v. Cook*, 351 Ark. 367, 94 S.W.3d 333 (2002).

Although mother lived in Oregon with her children, the Arkansas court had continuing jurisdiction of child custody matters because the children had a significant connection with Arkansas in that their father and multiple relatives resided in Arkansas and the children spent at least 20 percent of their time there; further, the mother's argument that findings in relation to subdivision (a)(1) of this section

should not be based solely upon court-ordered visitation was meritless. *West v. West*, 364 Ark. 73, 216 S.W.3d 557 (2005).

Father's contempt citation based on an alleged deprivation of visitation was dismissed as, pursuant to 28 U.S.C.S. § 1738A(b)(4) and § 9-19-102(7), Missouri was the child's "home state" due to the fact that the child had resided there for more than 5 years with the mother; thus, Arkansas was an inconvenient forum for deciding issues relating to visitation and an adoption. *Wilson v. Beckett*, 95 Ark. App. 300, 236 S.W.3d 527 (2006).

Trial court did not err when it determined that it had jurisdiction under this section to hear father's motion to change custody; the trial court's prior orders stated that it retained jurisdiction and there was sufficient contacts with Arkansas, despite the fact that the mother and children resided in the United Kingdom. *Uttley v. Bobo*, 97 Ark. App. 15, 242 S.W.3d 638 (2006).

Once it is determined that a significant connection remains, it is unnecessary under subsection (a) of this section to also

determine whether there is substantial evidence available in Arkansas. *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007).

Because the Parental Kidnapping Prevention Act, 28 U.S.C.S. § 1738A, had to be considered, a trial court did not err by determining that it had exclusive, continuing jurisdiction over a custody case after a child moved to Oklahoma due to the child's continuing contacts with Arkansas under subsection (a) of this section. The child's father and his family resided in Arkansas, visitation rights were exercised there, the child had friends there, and she attended church and vacation bible school in Arkansas. *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007).

Trial court's judgment modifying visitation was reversed because the trial court was wrong as a matter of law that it was

required to retain jurisdiction based solely upon one parent's continued residence in the state, and applying that mistaken premise, the trial court erred when it failed to exercise its discretion to determine whether it should exercise, or decline to exercise, jurisdiction under the UCCJEA, subsection (a) of this section (2002). *Gullahorn v. Gullahorn*, 99 Ark. App. 397, 260 S.W.3d 744 (2007).

Trial court lacked subject matter jurisdiction when it entered an initial child-custody order because the order was not consistent with § 9-19-201; Arkansas was not the home state of a minor child because she was not born there and had never been there. Moreover, the home state had not declined to exercise jurisdiction. *Czupil v. Jernigan*, 103 Ark. App. 132, 286 S.W.3d 753 (2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 792 (Nov. 13, 2008).

### 9-19-203. Jurisdiction to modify determination.

Except as otherwise provided in § 9-19-204, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under § 9-19-201(a)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under § 9-19-202 or that a court of this state would be a more convenient forum under § 9-19-207; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

**History.** Acts 1999, No. 668, § 203.

### CASE NOTES

#### ANALYSIS

In General.  
Guardianship.

#### In General.

While matters concerning the modification of child custody were pending in the courts of Louisiana and Arkansas, the Arkansas court acted properly in staying its proceedings and allowing the Louisiana court to dismiss its matter, based on a finding that Arkansas was the children's home state; later, the Arkansas court properly found that it had jurisdiction and that the children had lived in Arkansas for

more than six months. *Bridges v. Bridges*, 93 Ark. App. 358, 219 S.W.3d 699 (2005).

#### Guardianship.

Circuit court had jurisdiction, pursuant to this section, to determine matters involving the child's care, custody, and control and to determine both temporary and permanent guardianship because (1) Arkansas was the child's home state; (2) neither the child, the mother, nor the grandparents had a significant connection to California, where the original custody decision was made; (3) there was no substantial evidence in California concerning the child's care, protection, training, and

personal relationships; and (4) the California court declined to exercise continuing jurisdiction. *Devine v. Martens*, 371 Ark. 60, 263 S.W.3d 515 (2007).

### **9-19-204. Temporary emergency jurisdiction.**

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this chapter, and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under §§ 9-19-201 — 9-19-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to §§ 9-19-201 — 9-19-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

**History.** Acts 1999, No. 668, § 204.



## CASE NOTES

## ANALYSIS

Applicability.  
Jurisdiction Proper.

**Applicability.**

In a case where an Oklahoma child was left unattended in a car in Arkansas by his mother, a trial court had the authority to enter an order granting custody to the paternal grandparents because the child was placed in an emergency situation in Arkansas within the meaning of this section. *Arkansas HHS v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

**Jurisdiction Proper.**

In a guardianship case, there was no dispute that the child was present in Arkansas; also, the circuit court found that the child had been abandoned and that an emergency existed which created an imminent danger to the safety and health of the child. Thus, an emergency existed forming the basis for the circuit court's jurisdiction under this section. *Devine v. Martens*, 371 Ark. 60, 263 S.W.3d 515 (2007).

In a guardianship case, the circuit court concluded that it had jurisdiction for the

purpose of determining matters of the child's custody, and granted emergency temporary guardianship to the grandparents pursuant to § 28-65-218; the circuit court reasoned that an emergency existed because (1) the mother's lifestyle created a risk of imminent danger to the child's life or health; and (2) the mother had abandoned care of the child on a number of occasions during her lifetime, and left the child most recently with his grandparents. Thus, pursuant to this section, the circuit court did not clearly err in finding that an emergency existed that warranted the circuit court's exercise of jurisdiction over the temporary emergency guardianship petition. *Devine v. Martens*, 371 Ark. 60, 263 S.W.3d 515 (2007).

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of subsection (a) of this section applied, and Arkansas then became the home state of the children. *Davis v. Arkansas HHS*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

**9-19-205. Notice — Opportunity to be heard — Joinder.**

(a) Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of § 9-19-108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of this state as in child-custody proceedings between residents of this state.

**History.** Acts 1999, No. 668, § 205.

## CASE NOTES

**Cited:** Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

**9-19-206. Simultaneous proceedings.**

(a) Except as otherwise provided in § 9-19-204, a court of this state may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under § 9-19-207.

(b) Except as otherwise provided in § 9-19-204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 9-19-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

**History.** Acts 1999, No. 668, § 206.

**CASE NOTES****In General.**

While matters concerning the modification of child custody were pending in the courts of Louisiana and Arkansas, the Arkansas court acted properly in staying its proceedings and allowing the Louisiana court to dismiss its matter, based on a finding that Arkansas was the children's

home state; later, the Arkansas court properly found that it had jurisdiction and that the children had lived in Arkansas for more than six months. *Bridges v. Bridges*, 93 Ark. App. 358, 219 S.W.3d 699 (2005).

**Cited:** Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

**9-19-207. Inconvenient forum.**

(a) A court of this state which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

**History.** Acts 1999, No. 668, § 207.

**CASE NOTES****In General.**

Arkansas was not an inconvenient forum despite the fact that the mother and children had not resided in Arkansas for over five years as the mother provided no evidence to show that a court in the United Kingdom would have been an ap-

propriate forum; despite the fact that the issue was moot since the mother retained custody, the issue was heard since it was capable of repetition, yet evading review. *Uttley v. Bobo*, 97 Ark. App. 15, 242 S.W.3d 638 (2006).



**9-19-208. Jurisdiction declined by reason of conduct.**

(a) Except as otherwise provided in § 9-19-204 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under §§ 9-19-201 — 9-19-203 determines that this state is a more appropriate forum under § 9-19-207; or

(3) no court of any other state would have jurisdiction under the criteria specified in §§ 9-19-201 — 9-19-203.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under §§ 9-19-201 — 9-19-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

**History.** Acts 1999, No. 668, § 208.

**RESEARCH REFERENCES**

**A.L.R.** Construction and operation of Uniform Child Custody Jurisdiction and Enforcement Act. 100 A.L.R.5th 1.

**9-19-209. Information to be submitted to court.**

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the

child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1)-(3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

**History.** Acts 1999, No. 668, § 209.

## CASE NOTES

### **Jurisdiction Proper.**

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition

in Louisiana, the provisions of § 9-19-204(b) applied, and Arkansas then became the home state of the children. *Davis v. Arkansas HHS*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

**Cited:** *Ark. Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002).

## **9-19-210. Appearance of parties and child.**

(a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to § 9-19-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

**History.** Acts 1999, No. 668, § 210.

### SUBCHAPTER 3 — ENFORCEMENT

#### SECTION.

- 9-19-301. Definitions.
- 9-19-302. Enforcement under Hague Convention.
- 9-19-303. Duty to enforce.
- 9-19-304. Temporary visitation.
- 9-19-305. Registration of child-custody determination.
- 9-19-306. Enforcement of registered determination.
- 9-19-307. Simultaneous proceedings.
- 9-19-308. Expedited enforcement of child-custody determination.

#### SECTION.

- 9-19-309. Service of petition and orders.
- 9-19-310. Hearing and order.
- 9-19-311. Warrant to take physical custody of child.
- 9-19-312. Costs, fees, and expenses.
- 9-19-313. Recognition and enforcement.
- 9-19-314. Appeals.
- 9-19-315. Role of prosecutor or public official.
- 9-19-316. Role of law enforcement.
- 9-19-317. Costs and expenses.

#### **9-19-301. Definitions.**

In this subchapter:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

**History.** Acts 1999, No. 668, § 301.

#### **9-19-302. Enforcement under Hague Convention.**

Under this subchapter a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.



**History.** Acts 1999, No. 668, § 302.

### **9-19-303. Duty to enforce.**

(a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

**History.** Acts 1999, No. 668, § 303.

### **9-19-304. Temporary visitation.**

(a) A court of this state which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another state; or
- (2) the visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subdivision (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in subchapter 2 of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

**History.** Acts 1999, No. 668, § 304.

### **9-19-305. Registration of child-custody determination.**

(a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate circuit court in this state:

- (1) a letter or other document requesting registration;
- (2) two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) except as otherwise provided in § 9-19-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subdivision (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) of this section must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

**History.** Acts 1999, No. 668, § 305.

#### CASE NOTES

**Cited:** Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

**9-19-306. Enforcement of registered determination.**

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with subchapter 2 of this chapter, a registered child-custody determination of a court of another state.

**History.** Acts 1999, No. 668, § 306.

**CASE NOTES**

**Cited:** Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

**9-19-307. Simultaneous proceedings.**

If a proceeding for enforcement under this subchapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

**History.** Acts 1999, No. 668, § 307.

**9-19-308. Expedited enforcement of child-custody determination.**

(a) A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;



(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under § 9-19-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under § 9-19-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under § 9-19-305 and that:

(A) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter;

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under § 9-19-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter.

**History.** Acts 1999, No. 668, § 308.

### **9-19-309. Service of petition and orders.**

Except as otherwise provided in § 9-19-311, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

**History.** Acts 1999, No. 668, § 309.

**9-19-310. Hearing and order.**

(a) Unless the court issues a temporary emergency order pursuant to § 9-19-204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under § 9-19-305 and that:

(A) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under § 9-19-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter.

(b) The court shall award the fees, costs, and expenses authorized under § 9-19-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

**History.** Acts 1999, No. 668, § 310.

**9-19-311. Warrant to take physical custody of child.**

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

The application for the warrant must include the statements required by § 9-19-308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

**History.** Acts 1999, No. 668, § 311.

### **9-19-312. Costs, fees, and expenses.**

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

**History.** Acts 1999, No. 668, § 312.

### **9-19-313. Recognition and enforcement.**

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter.

**History.** Acts 1999, No. 668, § 313.

### **9-19-314. Appeals.**

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with the Supreme Court Rules of Appellate



Procedure. Unless the court enters a temporary emergency order under § 9-19-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

**History.** Acts 1999, No. 668, § 314.

### **9-19-315. Role of prosecutor or public official.**

(a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecuting attorney may take any lawful action, including resort to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) an existing child-custody determination;
- (2) a request to do so from a court in a pending child-custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecuting attorney acting under this section acts on behalf of the court and may not represent any party.

**History.** Acts 1999, No. 668, § 315.

### **9-19-316. Role of law enforcement.**

At the request of a prosecuting attorney acting under § 9-19-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecuting attorney with responsibilities under § 9-19-315.

**History.** Acts 1999, No. 668, § 316.

### **CASE NOTES**

**Cited:** Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

### **9-19-317. Costs and expenses.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecuting attorney and law enforcement officers under § 9-19-315 or § 9-19-316.

**History.** Acts 1999, No. 668, § 317.

## SUBCHAPTER 4 — MISCELLANEOUS PROVISIONS

### SECTION.

9-19-401. Application and construction.

9-19-402 — 9-19-405. [Reserved.]

### 9-19-401. Application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.** Acts 1999, No. 668, § 401.

### CASE NOTES

**Cited:** Weesner v. Johnson, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

### 9-19-402 — 9-19-405. [Reserved.]

**Publisher's Notes.** These provisions of the Uniform Interstate Family Support Act were not enacted in Arkansas.

## CHAPTER 20

### ADULT MALTREATMENT CUSTODY ACT

#### SECTION.

9-20-101. Title.

9-20-102. Purpose.

9-20-103. Definitions.

9-20-104. Spiritual treatment alone not abusive.

9-20-105. Privilege not grounds for exclusion of evidence.

9-20-106. Immunity for investigation participants.

9-20-107. Reports as evidence.

9-20-108. Jurisdiction — Venue — Eligibility.

9-20-109. Commencement of proceedings.

9-20-110. Petition.

9-20-111. Notification.

#### SECTION.

9-20-112. Voluntary protective placement.

9-20-113. Evaluations.

9-20-114. Emergency custody.

9-20-115. Emergency order of custody.

9-20-116. Probable cause hearing.

9-20-117. Long-term custody and court-ordered protective services hearings.

9-20-118. Review hearings.

9-20-119. Assets of a maltreated adult.

9-20-120. Duties and responsibilities of custodian.

9-20-121. Availability of custody and protective services records.

### 9-20-101. Title.

This chapter shall be known and may be cited as the "Adult Maltreatment Custody Act".

**History.** Acts 2005, No. 1811, § 1.

**9-20-102. Purpose.**

The purposes of this subchapter are to:

- (1) Protect a maltreated adult or long-term care facility resident who is in imminent danger; and
- (2) Encourage the cooperation of state agencies and private providers in the service delivery system for maltreated adults.

**History.** Acts 2005, No. 1811, § 1.

**9-20-103. Definitions.**

As used in this chapter:

(1)(A) "Abuse" means with regard to any long-term care facility resident or any person who is at the Arkansas State Hospital an act by a caregiver that falls into any of the following categories:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult, excluding court-ordered medical care or medical care requested by an endangered adult, an impaired adult, or a person who is legally authorized to make a medical decision on behalf of an endangered adult or an impaired adult;

(ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult;

(ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;



(3) "Caregiver" means a related person or an unrelated person, an owner, an agent, a high managerial agent of a public or private organization, or a public or private organization that has the responsibility for the protection, care, or custody of an endangered adult or an impaired adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the circuit court;

(4) "Custodian" means the Department of Human Services while the department is exercising a seventy-two hour hold on an endangered or impaired person or during the effective dates of an order granting custody to the department;

(5) "Department" means the Department of Human Services;

(6) "Endangered adult" means:

(A) An adult eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) An adult resident of a long-term care facility who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(7) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;

(C) Fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an endangered or an impaired person or long-term care facility resident for monetary or personal benefit, profit, or gain or that results in depriving the person or resident of rightful access to or use of benefits, resources, belongings, or assets; or

(D) Misappropriation of property of a long-term care facility resident;

(8)(A) "Fiduciary" means a person or entity with the legal responsibility to:

(i) Make decisions on behalf of and for the benefit of another person; and

(ii) Act in good faith and with fairness.

(B) "Fiduciary" includes without limitation a trustee, a guardian, a conservator, an executor, an agent under financial power of attorney or health care power of attorney, or a representative payee;

(9) "Imminent danger to health or safety" means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(10)(A) "Impaired adult" means a person eighteen (18) years of age or older who, as a result of mental or physical impairment, is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this chapter, residents of a long-term care facility are presumed to be impaired persons.

(C) For purposes of this chapter, a person with a mental impairment does not include a person who is in need of acute psychiatric treatment, chronic mental health treatment, alcohol or drug abuse treatment, or casework supervision by mental health professionals;

(11) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with mental retardation; or

(F) Any facility that provides long-term medical or personal care;

(12) "Long-term care facility resident" means a person eighteen (18) years of age or older living in a long-term care facility;

(13) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult resident of a long-term care facility;

(14) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(15) "Misappropriation of property of a long-term care facility resident" means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

(16) "Neglect" means:

(A) An act or omission by an endangered or an impaired adult, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered or an impaired adult constituting negligent failure to:

(i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or an impaired adult;

(ii) Report health problems or changes in health problems or changes in the health condition of an endangered or an impaired adult to the appropriate medical personnel;

(iii) Carry out a prescribed treatment plan; or

(iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services;

(17)(A) "Physical injury" means the impairment of a physical condition or the infliction of substantial pain.

(B) If the person is an endangered or an impaired adult, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(18)(A) "Protective services" means services to protect an endangered or an impaired adult from:

- (i) Self-neglect or self-abuse; or
- (ii) Abuse or neglect by others.

(B) Protective services may include:

- (i) Evaluation of the need for services;
- (ii) Arrangements or referrals for appropriate services available in the community;
- (iii) Assistance in obtaining financial benefits to which the person is entitled; or

(iv) As appropriate, referrals to law enforcement or prosecutors;

(19) "Resident of a long-term care facility" means a person eighteen (18) years of age or older living in a long-term care facility;

(20) "Serious bodily harm" means physical abuse, sexual abuse, physical injury, or serious physical injury;

(21) "Serious physical injury" means physical injury to an endangered or an impaired adult that:

(A) Creates a substantial risk of death; or

(B) Causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(22) "Sexual abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(23) "Subject of the report" means:

- (A) The endangered or an impaired adult;
- (B) The adult's legal guardian; and
- (C) The offender.

**History.** Acts 2005, No. 1811, § 1; 2007, No. 135, § 1; 2007, No. 283, § 1; 2007, No. 497, § 1; 2009, No. 526, § 1.

**A.C.R.C. Notes.** As originally enacted, subdivision (9)(E) read as follows: "(E) An intermediate care facility for the mentally retarded;"

Pursuant to § 1-2-124, the Arkansas Code Revision Commission has replaced the term "the mentally retarded" with the term "individuals with mental retardation".

**Amendments.** The 2007 amendment by No. 135 substituted "serious bodily harm" for "severe bodily injury" in (7).

The 2007 amendment by No. 283 rewrote (1); substituted "serious bodily harm" for "severe bodily injury" in (7); deleted "as those terms are defined in § 5-14-101" at the end of (19); and made related and stylistic changes.

The 2007 amendment by No. 497 substituted "a danger to himself or herself" for "an imminent risk of death or serious bodily harm to that person" in (5)(A)(i).

The 2009 amendment inserted (4), (8), (10)(C), and (15) and redesignated the remaining subdivisions accordingly; rewrote (7); and made related changes.



**9-20-104. Spiritual treatment alone not abusive.**

Nothing in this chapter implies that an endangered or impaired adult who is being furnished with treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof is for this reason alone an endangered or an impaired adult.

**History.** Acts 2005, No. 1811, § 1.

**9-20-105. Privilege not grounds for exclusion of evidence.**

Any privilege between husband and wife or between any professional persons, except lawyer and client, including, but not limited to, physicians, members of the clergy, counselors, hospitals, clinics, rest homes, nursing homes, and their clients, shall not constitute grounds for excluding evidence at any proceedings regarding an endangered or an impaired adult, or the cause of the proceeding.

**History.** Acts 2005, No. 1811, § 1.

**9-20-106. Immunity for investigation participants.**

Any person, official, or institution participating in good faith in the removal of a maltreated adult pursuant to this chapter shall have immunity from liability and suit for damages, civil or criminal, that otherwise might result by reason of such actions.

**History.** Acts 2005, No. 1811, § 1.

**9-20-107. Reports as evidence.**

(a) A written report from persons or officials required to report under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(c)(1) The court may seal any records or parts of records containing protected health information as defined by the Health Insurance Portability and Accountability Act of 1996.

(2) If a court seals any records or parts of records under subdivision (c)(1) of this section, the sealed records or parts of records become confidential and shall not be released to nonparties without a written order of the court.

**History.** Acts 2005, No. 1811, § 1; **Amendments.** The 2009 amendment added (c).

**U.S. Code.** The Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, referred to in (b), is codified throughout Titles 18, 26, 29 and 42 of the U.S. Code.

### **9-20-108. Jurisdiction — Venue — Eligibility.**

(a)(1) The probate division of circuit court shall have jurisdiction over proceedings for:

- (A) Custody;
- (B) Temporary custody for purposes of evaluation;
- (C) Court-ordered protective services; or
- (D) An order of investigation pursuant to this chapter.

(2) The probate division of circuit court shall retain jurisdiction for one hundred eighty (180) days after the death of an adult in the custody of the Department of Human Services to enter orders concerning disposition of the body of the adult as well as any assets of the adult, including the ability to order payment for services rendered or goods purchased by or for the adult while in the custody of the department before the death of the adult.

(b)(1) A proceeding under this chapter shall be commenced in the probate division of the circuit court of the county where:

- (A) The maltreated adult resides; or
- (B) The maltreatment occurred.

(2)(A) An adult custody proceeding shall not be dismissed if a proceeding is filed in the incorrect county.

(B) If the proceeding is filed in the incorrect county, the adult custody proceeding shall be transferred to the proper county upon discovery of the proper county for venue.

(C) Following the long-term custody hearing, the court may on its own motion or on motion of any party transfer the case to another county if the judge in the other venue agrees to accept the transfer.

(c) Eligibility for services from the department, including custody, for aliens and nonaliens shall be the same eligibility requirements for the Arkansas Medical Assistance Program.

(d) No person may be taken into custody or placed in the custody of the department under this section if that person is in need of:

- (1) Acute psychiatric treatment;
- (2) Chronic mental health treatment;
- (3) Alcohol or drug abuse treatment;
- (4) Protection from domestic abuse if that person is mentally competent; or

(5) Casework supervision by mental health professionals.

(e) No adult may be taken into custody or placed in the custody of the department for the sole purpose of consenting to the adult's medical treatment.

(f)(1) If the maltreated adult is found to be indigent and the court appoints the Arkansas Public Defender Commission as counsel for the maltreated adult, the commission shall represent the maltreated adult as to the issue of deprivation of liberty, but not with respect to issues involving property, money, investments, or other fiscal issues.

(2)(A) As to issues requiring court approval under § 9-20-120(b), the commission's role shall be to ensure that qualified medical personnel provide testimony or an affidavit with clear and convincing evidence to support the proposed medical action or inaction.

(B) A hearing is not required if counsel for both parties agree to waive the hearing or if an emergency exists for entry of an order.

(3) If the court appoints the public defender as counsel for the maltreated adult and assets are later identified for the maltreated adult, the court may award an attorney's fee to the commission.

**History.** Acts 2005, No. 1811, § 1; in (a)(2); inserted (b)(2) and redesignated 2009, No. 526, § 3. the remaining subdivisions of (b) accordingly; and added (f).

**Amendments.** The 2009 amendment inserted "the body of the adult as well as"

### 9-20-109. Commencement of proceedings.

(a) Proceedings shall be commenced by filing a petition with the clerk of the probate division of circuit court.

(b) Only the Department of Human Services may file a petition seeking ex parte emergency relief.

(c) No fees may be charged or collected by the clerk in cases brought by the department, including, but not limited to:

- (1) Fees for filing;
- (2) Summons; or
- (3) Subpoenas.

(d) The court shall immediately appoint the Arkansas Public Defender Commission to represent the maltreated adult if:

(1) There is reasonable cause to believe the maltreated adult is indigent; or

(2) The maltreated adult's liberty interest is in jeopardy and the financial condition of the maltreated adult is undetermined.

**History.** Acts 2005, No. 1811, § 1; deleted "or by transfer by another court" 2009, No. 526, § 4. following "circuit court" in (a); and added

**Amendments.** The 2009 amendment (d).

### 9-20-110. Petition.

A petition shall set forth the following:

(1) The name, address, and if known, the date of birth of the maltreated adult who shall be designated as the respondent;

(2) The maltreated adult's current location;

(3) The name and address of the maltreated adult's closest adult relative, if known;

(4)(A) The facts intended to prove the person to be maltreated.

(B) The facts may be set out in an affidavit attached to the petition and incorporated into the petition; and

(5) The relief requested by the petitioner.



**History.** Acts 2005, No. 1811, § 1.

### **9-20-111. Notification.**

(a) All maltreated adults named as the respondent shall be served with a copy of the petition under the Arkansas Rules of Civil Procedure.

(b) The Department of Human Services shall provide immediate notice of the date, time, and location of the probable cause hearing to:

- (1) The respondent;
- (2) The person from whom physical custody of the respondent was removed; and
- (3) Counsel for the respondent.

(c) The pleadings served on the respondent shall include a statement of the right to:

- (1)(A) Have an attorney represent him or her in this matter.  
(B) If the respondent desires an attorney to represent him or her but the respondent cannot afford to hire an attorney, an attorney will be appointed to represent the respondent by the court at no cost to the respondent;
  - (2) Be present at the hearing;
  - (3) Present evidence on the respondent's own behalf;
  - (4) Cross-examine witnesses who testify against him or her;
  - (5) Present witnesses in the respondent's own behalf;
  - (6) Remain silent; and
  - (7) View and copy all petitions, reports, and documents retained in the court file.
- (d) Notice of the long-term custody hearing shall be given to:
- (1) The legal counsel of the respondent;
  - (2) The next of kin of the respondent whose names and addresses are known to the petitioner;
  - (3) The person having physical custody of the respondent;
  - (4) Any person named in the petition; and
  - (5) Any other persons or entities that the court may require.

**History.** Acts 2005, No. 1811, § 1; inserted (c)(1)(B), redesignated the remaining text accordingly, rewrote 2009, No. 526, § 5.

**Amendments.** The 2009 amendment (c)(1)(A), and made a related change.

### **9-20-112. Voluntary protective placement.**

(a) Any adult may request voluntary protective placement under this chapter.

(b) No civil rights are relinquished as a result of voluntary protective placement.

(c) Procedures for hearings under this chapter shall be followed with regard to voluntary protective placement.

**History.** Acts 2005, No. 1811, § 1.

**9-20-113. Evaluations.**

(a) The Department of Human Services may petition the circuit court for an order of temporary custody for the purpose of having an adult evaluated if during the course of an investigation under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., the department determines that:

(1) Immediate removal is necessary to protect the adult from imminent danger to his or her health or safety;

(2) Available protective services have been offered to alleviate the danger and have been refused; and

(3)(A) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition cannot be adequately assessed in the adult's place of residence; or

(B) The adult's mental or physical impairment and ability to protect himself or herself from adult maltreatment cannot be adequately assessed in the adult's place of residence.

(b) Upon good cause being shown, the court may issue an order for temporary custody for the purpose of having the adult evaluated.

**History.** Acts 2005, No. 1811, § 1; 2007, No. 497, § 2.

**Amendments.** The 2007 amendment substituted "Evaluations" for "Petition for evaluations" in the section heading; sub-

stituted "§ 12-12-1701 et seq." for "§ 12-12-1601 et seq." in (a); rewrote (a)(1); redesignated former (a)(3) as present (a)(3)(A); added (a)(3)(B); and made minor punctuation and stylistic changes.

**9-20-114. Emergency custody.**

(a) The Department of Human Services or a law enforcement official may take a maltreated adult into emergency custody, or any person in charge of a hospital or similar institution or any physician treating any maltreated adult may keep the maltreated adult in custody, whether or not medical treatment is required, if the circumstances or condition of the maltreated adult are such that returning to or continuing at the maltreated adult's place of residence or in the care or custody of a parent, guardian, or other person responsible for the maltreated adult's care presents imminent danger to the maltreated adult's health or safety, and the maltreated adult either:

(1) Lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents imminent danger to his or her health or safety; or

(2) Has a mental impairment or a physical impairment that prevents the maltreated adult from protecting himself or herself from imminent danger to his or her health or safety.

(b) Emergency custody shall not exceed seventy-two (72) hours unless the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody shall be extended through the next business day following the weekend or holiday.

(c) A person who takes a maltreated adult into emergency custody shall notify the department immediately upon taking the adult into emergency custody.

(d) The department may release custody of an adult within the seventy-two (72) hours if the adult is no longer in circumstances or conditions that present imminent danger to the adult's health or safety.

(e)(1) If emergency custody is exercised under this section, the person exercising the custody or the department may consent to having the maltreated adult transported by a law enforcement officer or by ambulance if medically appropriate, even if the adult objects.

(2) No court order shall be required for law enforcement or ambulance transport.

(3) If an ambulance driver or company or a law enforcement officer acts in good faith under this section, the immunity provisions of § 5-28-207 [repealed] shall apply.

(4) The good faith of the ambulance driver or company or law enforcement officer shall be presumed.

**History.** Acts 2005, No. 1811, § 1; 2007, No. 283, § 2; 2007, No. 497, § 3.

**Amendments.** The 2007 amendment by No. 283, in (a), added (a)(2), redesignated part of the introductory paragraph as (a)(1), after the first occurrence of "maltreated adult", inserted "maltreated" preceding "adult" throughout, and made related and stylistic changes.

The 2007 amendment by No. 497 added "or the adult has a mental or physical impairment that prevents the adult from protecting himself or herself from imminent danger to his or her health or safety" at the end of (a).

## 9-20-115. Emergency order of custody.

(a) If there is probable cause to believe that immediate emergency custody is necessary to protect a maltreated adult, the probate division of circuit court shall issue an ex parte order for emergency custody to protect the maltreated adult.

(b) The Department of Human Services shall obtain an emergency ex parte order of custody on a maltreated adult within seventy-two (72) hours of taking the maltreated adult into emergency custody unless the expiration of the seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody may be extended through the next business day following the weekend or holiday.

(c) The emergency order shall include notice to the maltreated adult and the person from whom physical custody of the respondent was removed of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order.

**History.** Acts 2005, No. 1811, § 1.



**9-20-116. Probable cause hearing.**

(a)(1) Following issuance of an emergency order, the probate division of circuit court shall hold a hearing within five (5) business days to determine whether probable cause to issue the emergency order continues to exist.

(2) The court may hold a probable cause hearing anywhere in the judicial district.

(b)(1) At the probable cause hearing, the court shall make the following inquiries of the maltreated adult or other witnesses:

(A) Whether the maltreated adult has the financial ability to retain counsel; and

(B) If the maltreated adult does not have the financial ability to retain counsel, whether the maltreated adult is indigent.

(2) The court shall:

(A) Inform the maltreated adult of the right to effective assistance of counsel; and

(B) If the maltreated adult is indigent, appoint counsel for the maltreated adult.

(c) The hearing shall be limited to the purpose of determining whether probable cause:

(1) Existed to protect the maltreated adult; and

(2) Still exists to protect the maltreated adult.

(d) The court may enter orders:

(1) Regarding protection of assets of the maltreated adult; or

(2) Ordering or authorizing the Department of Human Services to obtain treatment, evaluations, or services for the maltreated adult.

(e) The probable cause hearing shall be a miscellaneous hearing.

(f)(1) Upon a finding of probable cause, the court may order temporary custody for up to thirty (30) days pending the hearing for long-term custody.

(2) However, the court may extend the time under subdivision (f)(1) of this section upon a finding that extenuating circumstances exist.

**History.** Acts 2005, No. 1811, § 1; in (a), added (a)(2), and redesignated the 2007, No. 283, § 3. introductory paragraph as (a)(1).

**Amendments.** The 2007 amendment,

**9-20-117. Long-term custody and court-ordered protective services hearings.**

(a)(1) A hearing for long-term custody or court-ordered protective services shall be held no later than thirty (30) days after the date of the probable cause hearing or the date the order for emergency custody was signed.

(2) However, the probate division of circuit court may extend the time during which the hearing must be held upon a finding that extenuating circumstances exist.

(b) The court may hold a hearing for long-term custody or protective services anywhere in the judicial district.

(c) The court may order long-term custody with the Department of Human Services if the court determines that:

(1) The adult has a mental or physical impairment or lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents an imminent danger to his or her health or safety;

(2) The adult is unable to provide for his or her own protection from maltreatment; and

(3) The court finds clear and convincing evidence that the adult to be placed is in need of placement as provided in this chapter.

(d)(1) The court shall make a finding in connection with the determination of the least restrictive alternative to be considered proper under the circumstances, including a finding for noninstitutional care if possible.

(2) If protective services are available to remedy the imminent danger to the maltreated adult, the court may order the adult or the caregiver for the adult to accept the protective services in lieu of placing the adult in the custody of the department.

(e)(1) The court may order that treatment, evaluations, and services be obtained for the maltreated adult.

(2) However, the court may not specify a particular provider for services or placement unless the adult is paying for the service or placement.

(f) The court may order that social security, retirement, or other sources of income be redirected on behalf of the maltreated adult.

**History.** Acts 2005, No. 1811, § 1; The 2009 amendment redesignated (a) 2007, No. 283, § 4; 2009, No. 526, § 6. as (a)(1), and inserted “has a mental or

**Amendments.** The 2007 amendment added (f). physical impairment or” in (c)(1).

## 9-20-118. Review hearings.

(a) The Department of Human Services shall periodically review the case of an adult in the custody of the department, but not less often than one (1) time every six (6) months.

(b) The circuit court shall review the case of an adult in the custody of the department, either formally or informally as determined by the court, at least one (1) time every twelve (12) months.

(c) Notice for review hearings shall be by regular mail to the attorney for the respondent and to the administrator of the facility in which the respondent is placed.

(d)(1) Upon presentation of a statement under oath by a medical doctor that attendance at the hearing is not in the best interest of the adult based on the adult’s mental incapacity or physical health, the court shall waive the presence of the adult at a review hearing unless there is a showing by the adult’s attorney that the adult’s attendance at the court hearing is necessary.

(2) If it is not in the adult's best interest to appear at court under subdivision (d)(1) of this section, the adult may submit a written statement or an audio or video statement for consideration by the court.

**History.** Acts 2005, No. 1811, § 1; **Amendments.** The 2009 amendment 2009, No. 526, § 7. added (d).

### **9-20-119. Assets of a maltreated adult.**

(a)(1) The probate division of circuit court may enter orders as needed to identify, secure, and protect the assets of any adult in the custody of the Department of Human Services or any maltreated adult receiving court-ordered protective services from the department.

(2) If the court orders the adult placed in the custody of the department, the court shall address the issue of the adult's residence, whether rented or owned by the adult, including the cleaning, vacating, selling, or leasing of the residence, and the disposition of the property in the residence.

(3) After review of the assets, the court may order the sale of any assets if it is in the best interest of the adult.

(b) The court may also direct payment from the assets of the adult in department custody or receiving protective services from the department for services rendered or goods purchased by or for the adult in the custody of the department or receiving services from the department.

(c)(1) The court may appoint the department only as custodian of the adult and not as guardian of the person or of the estate of the adult.

(2) The court has jurisdiction in this matter to hear and grant a petition for guardianship of the estate of an adult in the custody of the department.

**History.** Acts 2005, No. 1811, § 1; inserted "as guardian of the person or" in 2009, No. 526, § 8. (c)(1).

**Amendments.** The 2009 amendment

### **9-20-120. Duties and responsibilities of custodian.**

(a)(1) If the probate division of circuit court appoints the Department of Human Services as the legal custodian of a maltreated adult, the department shall:

(A) Secure care and maintenance for the person;

(B) Honor any advance directives, such as living wills, if the legal documents were executed in conformity with applicable laws; and

(C) Find a person to be guardian of the estate of the adult if a guardian of the estate is needed.

(2) If the court appoints the department as the legal custodian of a maltreated adult, the department may:

(A) Consent to medical care for the adult;

(B) Obtain physical or psychological evaluations; and

(C) Obtain medical, financial, and other records of the adult.



(b) The department as custodian shall not make any of the following decisions without receiving express court approval:

(1) Consent to abortion, sterilization, psychosurgery, or removal of bodily organs unless a procedure is necessary in a situation threatening the life of the maltreated adult;

(2) Consent to withholding life-saving treatment;

(3) Authorize experimental medical procedures;

(4) Authorize termination of parental rights;

(5) Prohibit the adult from voting;

(6) Prohibit the adult from obtaining a driver's license;

(7) Consent to a settlement or compromise of any claim by or against the adult or his or her estate;

(8) Consent to the liquidation of assets of the adult through such activities as an estate sale;

(9) Amputation of any part of the body; or

(10) Consent to withholding life-sustaining treatment.

(c)(1) Upon the death of a person in the custody of the department, the department shall abide by a prior arrangement made by the person for the disposition of the person's body.

(2) If prior arrangements were not made:

(A) The department may request the court to grant authority to the department to use funds or resources of the deceased person as to disposition of the body; or

(B) Upon consent from the person's closest family member or after notice and the opportunity to be heard by the court, the department may consent to donate the person's body to medical science.

(3) The department is not responsible for any costs related to disposition of the person's body.

**History.** Acts 2005, No. 1811, § 1; inserted (b)(10), added (c), and made related changes.  
2009, No. 526, § 9.

**Amendments.** The 2009 amendment

## **9-20-121. Availability of custody and protective services records.**

(a) Reports, correspondence, memoranda, case histories, medical records, or other materials, including protected health information, compiled or gathered by the Department of Human Services regarding a maltreated adult in the custody of the department or receiving protective services from the department shall be confidential and shall not be released or otherwise made available except:

(1) To the maltreated adult;

(2) To the attorney representing the maltreated adult in a custody or protective services case;

(3) For any audit or similar activity conducted with the administration of any plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(4) To law enforcement agencies, a prosecuting attorney, or the Attorney General;

(5)(A) To any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(B) Information released under subdivision (5)(A) of this section shall be maintained as confidential;

(6) To a circuit court under this chapter;

(7) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(8) To a person or provider currently providing care or services to the adult;

(9) To a person or provider identified by the department as having services needed by the adult;

(10)(A) To individual federal and state representatives and senators in their official capacity, who shall not redisclose the information.

(B) No disclosure may be made to any committee or legislative body of any information that identifies by name or address any recipient of services; and

(11) In the discretion of the department, with family members if the adult is in the custody of the department.

(b) Except for the maltreated adult, no person or agency to whom disclosure is made may disclose to any other person reports or other information obtained under this section.

(c) A disclosure of information in violation of this section shall be a Class C misdemeanor.

**History.** Acts 2005, No. 1811, § 1; 2007, No. 283, § 5.

**Amendments.** The 2007 amendment, in (a), in the introductory paragraph, inserted “including protected health information” and substituted “receiving protec-

tive services” for “receiving services,” and inserted “in their official capacity” in (a)(10)(A); inserted “Except for the maltreated adult” in (b); and made related changes.

## CHAPTERS 21-24

[Reserved]

## SUBTITLE 3. MINORS

### CHAPTER 25

## GENERAL PROVISIONS

#### SECTION.

9-25-101. Age of majority — Exceptions.

9-25-102. Destruction of property.

9-25-103. Mother's assent to child's apprenticeship.

#### SECTION.

9-25-104. Immediate notification of parents when child in custody.

**A.C.R.C. Notes.** Acts 1997, No. 768, § 45, provided: "Youth violence prevention. A majority of moneys received from the funds provided herein for youth violence prevention programs shall be used for grants to local communities, with a minimal amount expended for administrative costs as approved by the Governor's Partnership Council for Children and Families. The Governor's Partnership Council shall also assure a portion of the moneys received from the funds provided herein are placed in a trust fund to be used for future grants."

**Cross References.** Consent of parents necessary to marriage, § 9-11-102.

Consent to treatment of sexually transmitted disease by minor, § 20-16-508.

Removing disabilities of minors, § 9-26-104.

**Effective Dates.** Acts 1873, No. 78, § 51: effective on passage.

Acts 1873, No. 126, § 12: effective on passage.

Acts 1959, No. 45, § 2: Feb. 13, 1959. Emergency clause provided: "It is hereby found and declared by the General Assembly that a considerable amount of property is destroyed each year in this State by the intentional and malicious acts of children under eighteen (18) years of age; that there is presently no law in this State rendering the parents of such children liable in damages for property intentionally and maliciously destroyed by their children, and that this Act will provide a much needed remedy for such property owners against the parents of such children. Therefore an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## RESEARCH REFERENCES

**Am. Jur.** 42 Am. Jur. 2d, Infants, § 1 et seq.

**C.J.S.** 25 C.J.S., Damages, § 143.  
27 C.J.S., Discovery, §§ 106, 107.

37 C.J.S., Fraud, § 31.

43 C.J.S., Infants, § 1 et seq.

81A C.J.S., Spec Perf, § 197.

93 C.J.S., Ware & SD, §§ 26(5), 95.

## 9-25-101. Age of majority — Exceptions.

(a) All persons of the age of eighteen (18) years shall be considered to have reached the age of majority and be of full age for all purposes. Until the age of eighteen (18) years is attained, they shall be considered minors.

(b) Any law of the State of Arkansas that presently requires a person to be of a minimum age of twenty-one (21) years to enjoy any privilege or right or to do any act or to participate in any event, election, or other activity shall be deemed to require that person to be of a minimum age of eighteen (18) years. However, this section shall not repeal, amend, or otherwise affect any existing laws concerning or in any way relating to beer, wines, spirituous, vinous, malt liquors, or other alcoholic beverages, and the sale thereof to persons under twenty-one (21) years of age.

**History.** Acts 1873, No. 78, § 1, p. 185; Acts 1975, No. 892, § 1; A.S.A. 1947, C. & M. Dig., § 4986; Pope's Dig., § 6215; § 57-103.



## RESEARCH REFERENCES

**Ark. L. Rev.** Gitelman and McIvor, Domicile, Residence and Going to School in Arkansas, 37 Ark. L. Rev. 843 (1984).

**U. Ark. Little Rock L.J.** Note: Duty of Continued Child Support Past the Age of Majority, 1 U. Ark. Little Rock L.J. 397.

## CASE NOTES

## ANALYSIS

Agreements Prior to Amendment.  
Guardian Ad Litem.  
Homestead Rights.  
Support.

**Note.** — Many of the following cases were decided prior to the 1975 amendment to this section. Prior to that amendment, males reached the age of majority at 21 years of age while females reached the age of majority at 18 years of age.

**Agreements Prior to Amendment.**

Reduction of legal age of majority for males had no impact on a prior support agreement between divorced husband and wife. *Brown v. Smith*, 1 Ark. App. 141, 613 S.W.2d 598 (1981).

**Guardian Ad Litem.**

In suit to foreclose mortgage on homestead, appointment of guardian ad litem to represent mortgagor's children, who inherited an interest during minority but were of full age when suit was filed, was unnecessary. *Federal Land Bank v. Cottrell*, 197 Ark. 783, 126 S.W.2d 279 (1939).

**Homestead Rights.**

The homestead right of a female infant ceases at 21 under the Constitution, but when there are no younger children, the female child may relinquish or abandon the homestead when she reaches the age

of 18. *Hargett v. Hill-Fontaine & Co.*, 101 Ark. 510, 142 S.W. 1137 (1912).

**Support.**

Where daughter was a normal person in every respect and there was no physical or mental handicap which would imply a continuing obligation of support by the parent, the father's legal obligation, absent a contract to the contrary, ceased when she became 18 years of age. *Worthington v. Worthington*, 207 Ark. 185, 179 S.W.2d 648 (1944).

Once a child reaches majority and is physically and mentally normal, the legal duty of the parents to support that child ceases; that duty cannot be reimposed later if the adult child becomes disabled and needs support. *Towery v. Towery*, 285 Ark. 113, 685 S.W.2d 155 (1985).

**Cited:** *Brake v. Sides*, 95 Ark. 74, 128 S.W. 572 (1910); *Gamble v. Phillips*, 107 Ark. 561, 156 S.W. 177 (1913); *Shinley v. Ricks*, 234 Ark. 767, 354 S.W.2d 547 (1962); *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962); *Norwood v. Allen*, 240 Ark. 232, 398 S.W.2d 684 (1966); *Petty v. Petty*, 252 Ark. 1032, 482 S.W.2d 119 (1972); *Harris v. Pacific Floor Mach. Mfg. Co.*, 856 F.2d 64 (8th Cir. 1988); *Linder v. Howard*, 296 Ark. 414, 757 S.W.2d 549 (1988); *Thomas v. Swanson*, 881 F.2d 523 (8th Cir. 1989); *Phillips v. Sugrue*, 800 F. Supp. 789 (E.D. Ark. 1992); *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992); *Cowden v. Ramsay*, 154 B.R. 531 (Bankr. E.D. Ark. 1993); *Low v. Ins. Co. of N. Am.*, 364 Ark. 427, 220 S.W.3d 670 (2005).

**9-25-102. Destruction of property.**

The state, or any county, city, town, or school district, or any person, corporation, or organization shall be entitled to recover damages in an amount not in excess of five thousand dollars (\$5,000) in a court of competent jurisdiction from the parents of any minor under eighteen (18) years of age, living with the parents, who shall maliciously or willfully destroy real, personal, or mixed property belonging to the state or county, city, town, or school district, or any person, corporation, or organization.

**History.** Acts 1959, No. 45, § 1; 1975, No. 283, § 1; 1977, No. 201, § 1; A.S.A. 1947, § 50-109; Acts 1987, No. 36, § 1.

### RESEARCH REFERENCES

**Ark. L. Rev.** Torts and the Family — Survey — Torts, 10 U. Ark. Little Rock Areas of Liability, 14 Ark. L. Rev. 92. L.J. 609.  
**U. Ark. Little Rock L.J.** Survey of Arkansas Law: Torts, 6 U. Ark. Little Rock L.J. 211.

### CASE NOTES

#### ANALYSIS

Construction.  
 Intent.

#### Construction.

“Willfully” within the context of this section, which must be strictly construed because of its penal nature, means an intent to do the act in question. Farm

Bureau Mut. Ins. Co. v. Henley, 275 Ark. 122, 628 S.W.2d 301 (1982).

#### Intent.

Where evidence showed that children caused fire but did not actually intend to set fire to building, their parents were not held liable under this section. Farm Bureau Mut. Ins. Co. v. Henley, 275 Ark. 122, 628 S.W.2d 301 (1982).

### 9-25-103. Mother's assent to child's apprenticeship.

No man shall bind his child to apprenticeship or service, part with the control of the child, or create any testamentary guardian therefor unless the mother, if living, shall in writing signify her assent thereto.

**History.** Acts 1873, No. 126, § 7, p. 382; C. & M. Dig., § 5585; Pope's Dig., § 7235; A.S.A. 1947, § 57-107.

### RESEARCH REFERENCES

**Ark. L. Rev.** Domestic Relations: The Expanding Role of the Mother in Child Support, 27 Ark. L. Rev. 157.

### 9-25-104. Immediate notification of parents when child in custody.

(a) When the Department of Human Services has taken custody of a minor solely because of the actions of someone other than a custodial parent, the department shall immediately exercise all efforts to identify and locate the custodial parent or custodial parents of the minor.

(b) When a parent is identified and located, and if that parent is a custodial parent, the department shall immediately notify the parent as to the location of the minor and of the parent's right to obtain possession of the minor at that location.

(c) The department shall not withhold custody or possession of any child from the child's custodial parent or parents unless a petition for

dependency-neglect is filed naming the custodial parent or parents as a party.

**History.** Acts 2001, No. 1245, § 1.

## CHAPTER 26

### RIGHTS RESPECTING BUSINESS AND PROPERTY

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS UNIFORM TRANSFERS TO MINORS ACT.
3. UNIFORM SECURITIES OWNERSHIP BY MINORS ACT.

#### RESEARCH REFERENCES

**A.L.R.** Testamentary gift to child conditioned upon specified arrangements for parental control. 11 A.L.R.4th 940.

**Am. Jur.** 42 Am. Jur. 2d, Infants, §§ 45, 46.

**C.J.S.** 37 C.J.S., Fraud, §§ 35, 137.  
43 C.J.S., Infants, § 108 et seq.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

- 9-26-101. Rescission of sale, contract, etc., by minor — Restitution.
- 9-26-102. Payment of money or delivery of personal property to minor — Duties of recipient.

##### SECTION.

- 9-26-103. Ownership of property by persons 18 years of age or older.
- 9-26-104. Removal of disability of a minor.
- 9-26-105. [Repealed.]

**Cross References.** Age of majority, § 9-25-101.

**Effective Dates.** Acts 1937, No. 235, § 2: Mar. 10, 1937. Emergency clause provided: "The immediate operation of this act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this act shall take effect and be in full force immediately from and after its passage and approval."

Acts 1953, No. 337, § 3: Mar. 28, 1953. Emergency clause provided: "There are many persons who are presently dealing in good faith with infants 18 years of age or older who are being damaged unjustly

by reason of the infants rescinding sales, contracts to sell, conditional sale contracts, and other contracts without first making full restitution, and this Act is necessary for the preservation of the public peace, health and safety. Therefore, an emergency is hereby declared to exist and this Act shall take full force and effect from and after its passage and approval."

Acts 1969, No. 28, § 4: Feb. 4, 1969. Emergency clause provided: "It is necessary that some minors who have reached the ages mentioned in this act be qualified to act without expensive and delaying procedures, and an emergency is declared for the public peace, health and safety and



this act shall take effect and be in full force from and after its passage and approval."

Acts 1975, No. 231, § 5: Feb. 21, 1975. Emergency clause provided: "It is hereby found and determined that the existing laws of this State deny economic privileges to persons under the age of twenty-one (21) which adversely affect the rights, privileges and opportunities of persons under age twenty-one (21) but of the age of

eighteen (18) years or over, and that the immediate passage of this Act is necessary to grant all persons eighteen (18) years of age or over the same economic privileges as provided adults. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 620, § 16: July 1, 1975.

## 9-26-101. Rescission of sale, contract, etc., by minor — Restitution.

(a) In the case of a sale, contract to sell, conditional sale contract, or other contract to which an infant eighteen (18) years of age or older is a party, the sale, contract to sell, conditional sale contract, or other contract cannot be rescinded by the infant unless and until the infant makes full restitution to the other party to the sale, contract to sell, conditional sale contract, or other contract of the property and money received by the infant from the other parties.

(b) Full restitution of property means that the property must be returned in substantially the same condition as received. If this cannot be done, there must be returned the property plus a sum of money that equals the difference between the fair market value of the property at the time the sale, contract to sell, conditional sale contract, or other contract was made and its fair market value at the time of the rescission, or, if the property is no longer in the possession of the infant, there must be returned a sum of money equal to its fair market value at the time the sale, contract to sell, conditional sale contract, or other contract was made.

**History.** Acts 1953, No. 337, § 1; A.S.A. 1947, § 68-1601.

**Publisher's Notes.** This section may be affected by § 9-25-101. Acts 1975, No.

892, § 1 amended that section to change the age of majority from 21 years of age to 18 years of age.

## CASE NOTES

### ANALYSIS

Applicability.  
Market Value.  
Restitution.

**Note.** — The following cases were decided prior to the 1975 amendment to § 9-25-101.

### Applicability.

The requirement that a minor 18 years

old at the time of a purchase cannot rescind the contract of purchase without reimbursing the seller for loss due to rescission does not apply to a contract made by a minor under 18. *Robertson v. King*, 225 Ark. 276, 280 S.W.2d 402, 52 A.L.R.2d 1108 (1955).

### Market Value.

Market value may be determined without restitution having been made in kind. *Security Bank v. McEntire*, 227 Ark. 667,

300 S.W.2d 588 (1957).

Car's market value at a given prior date can be proved without regard to who happens to have possession of the vehicle at the time of the hearing. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Minor's testimony as to value of his own property was competent as was that of his father, who had owned more than a dozen automobiles. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

#### **Restitution.**

Evidence showed there was a single transaction, which the minor was entitled to avoid by giving back the only thing he received. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Minor was properly allowed 30 days in which to return an automobile, which was being held in another state for nonpayment of a repair bill. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Where maker of note was 19, he could be sued for deficiency after sale of repossessed automobile which had been purchased with note, since minors over 18 may rescind contract only if they make full restitution, including a sum of money equal to the difference between market value at time of sale and time of rescission. *Wheless v. Eudora Bank*, 256 Ark. 644, 509 S.W.2d 532 (1974).

### **9-26-102. Payment of money or delivery of personal property to minor — Duties of recipient.**

(a)(1) Any person under a duty to pay or deliver money or personal property to a minor may perform his or her duty, in amounts not exceeding five thousand dollars (\$5,000) per annum, by paying or delivering the money or property to:

(A) The minor, if he or she has attained eighteen (18) years of age or is married;

(B) Any person having the care and custody of the minor with whom the minor resides;

(C) A guardian of the person of the minor; or

(D) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) However, any amounts in excess of one thousand dollars (\$1,000) per annum must also be approved by the circuit court in the county in this state in which the minor or the person paying or delivering the money or property resides or is domiciled.

(3) This subsection does not apply if the person making payment or delivery has actual knowledge that a guardian of the estate has been appointed or proceedings for appointment of a guardian of the estate of the minor are pending.

(b)(1) The persons, other than the minor or any financial institutions under subdivision (a)(1)(D) of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support.

(2) Any excess sums shall be preserved for the future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he or she attains majority.

(c) Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

**History.** Acts 1975, No. 620, § 5; A.S.A. 1947, § 57-136.

### CASE NOTES

#### **In General.**

This section does not dictate the conclusion that a parent may settle claims for less than \$1,000 for a minor, nor does it dispense with the necessity of the ap-

proval of a court of proper jurisdiction in the settlement of a minor's claim for tort. *Walker v. Stephens*, 3 Ark. App. 205, 626 S.W.2d 200 (1981).

### **9-26-103. Ownership of property by persons 18 years of age or older.**

(a) All persons eighteen (18) years of age or older may acquire title to, own, and dispose of real and personal property, both tangible and intangible, in the same manner, and shall be subject to the same rights, obligations, and liabilities with respect thereto as provided for persons twenty-one (21) years of age or older.

(b)(1) It is the intent and purpose of this section to define the economic privileges of persons eighteen (18) years of age or older with respect to the acquisition and disposal of real and personal property and to assure these individuals of the same rights and obligations with respect thereto as are provided by law for persons twenty-one (21) years of age or older.

(2) It is the intent of this section to amend the laws of this state applicable to minors only to the extent as provided in this section. Nothing in this section shall be construed to modify or repeal any of the laws of the state with respect to minors except as specifically provided in this section.

(3) However, nothing in this section shall be construed to authorize or permit persons under twenty-one (21) years of age to purchase alcoholic beverages or to authorize or permit males under the age of twenty-one (21) years of age and females under the age of eighteen (18) years of age to contract marriage except as provided by law.

(c) The provisions of this section shall be supplemental to the laws of this state pertaining to the rights and obligations of minors.

**History.** Acts 1975, No. 155, §§ 1-3; 1975, No. 231, §§ 1-3; A.S.A. 1947, §§ 50-931, 50-932, 50-932n.

**Cross References.** Minimum age for marriage, § 9-11-102.

### **9-26-104. Removal of disability of a minor.**

(a) The circuit courts of this state or the respective judges thereof in vacation shall have the power to authorize any person who is a resident of the county and who has reached his or her sixteenth birthday to transact business in general and any particular business specified in



like manner and with the same effect as if such act or thing were done by a person who had attained majority. Every act done by a person so authorized shall have the same force and effect in law and equity as if done by a person of full age.

(b) Letters testamentary, of administration, or of guardianship may be granted to any such person, if otherwise entitled by law to have or hold such fiduciary trust, with like effect as if granted to a person over the age of majority.

(c) The order of removal of disabilities may be made by the courts, or the respective judges thereof, in term time or in vacation.

(d)(1) The circuit courts of any county in which a nonresident minor of the State of Arkansas owns real estate, or any interest in real estate, shall have jurisdiction to remove the disabilities of minority of the minor when the person has reached sixteen (16) years of age, as to the real estate. This may be done to enable the minor to sell and convey the real estate, or any interest therein, which may be owned by the minor or to mortgage or otherwise dispose of the real estate, as fully and effectually as if the minor was of full age.

(2) The order of removal of disabilities may be made by the courts, or the respective judges thereof in term time or in vacation, and, if made in vacation, shall be entered at large upon the records of the court.

(e) After the filing of a petition to remove the disability of a minor, the court shall fix a time and place for hearing the petition. At least twenty (20) days before the date of the hearing, notice of the filing of the petition and of the time and place of the hearing shall be given by the petitioner to any parent or legal guardian of the minor who has not joined in the petition. The notice shall be given in the same manner as is provided for summons under the Arkansas Rules of Civil Procedure.

**History.** Acts 1937, No. 235, § 1; Pope's Dig., § 7453; Acts 1941, No. 336, § 1; 1969, No. 28, § 1; 1969, No. 29, § 1; 1979, No. 640, §§ 1, 2; A.S.A. 1947, §§ 34-2001, 34-2002; Acts 1989, No. 382, § 1.

**A.C.R.C. Notes.** Acts 1969, No. 28, § 2 provided that all orders entered before February 4, 1969, removing disabilities of minority of any male who has reached his 18th birthday and of any female who has reached her 16th birthday, would be valid and binding, as far as the age limit is

concerned.

As originally enacted, subdivisions (a) and (d)(1) began: "The circuit courts and the chancery courts." In addition, the first sentence of subdivision (d)(1) provided that the courts: "shall have concurrent jurisdiction." References to chancery courts have been deleted in light of Ark. Const., Amend. 80, which abolished chancery courts and established circuit courts as the trial courts of original jurisdiction, effective July 1, 2001.

## CASE NOTES

### ANALYSIS

Collateral Attack.  
Minor Under Prescribed Age.  
Right to Sue or Defend.

### Collateral Attack.

A decree removing the disabilities of an infant was open to collateral attack where it failed to show the jurisdictional facts as to his age and residence, but a decree

which recited these facts could not be attacked collaterally. *Gilmore v. Union Sawmill Co.*, 178 Ark. 297, 10 S.W.2d 517 (1928).

A decree removing the disabilities of a minor may not be collaterally attacked. *May v. Spivey Chevrolet Co.*, 241 Ark. 1098, 411 S.W.2d 528 (1967).

#### **Minor Under Prescribed Age.**

Order removing disabilities of minors under 14 years of age was void. *Dalton v. Bradley Lumber Co.*, 135 Ark. 392, 205 S.W. 695 (1918).

Order removing disability of minority of infant under the age prescribed was void and could be attacked collaterally. *Tays v. Johnson*, 173 Ark. 223, 292 S.W. 122 (1927).

#### **Right to Sue or Defend.**

Removal of disabilities authorized minor to sue or defend suit without guardian ad litem. *Merriman v. Sarlo*, 63 Ark. 151, 37 S.W. 879 (1896).

### **9-26-105. [Repealed.]**

**Publisher's Notes.** This section, concerning the removal of the disability of minority from World War II veterans, was repealed by Acts 1997, No. 838, § 1. The

section was derived from Acts 1945, No. 35, §§ 1, 2; A.S.A. 1947, §§ 11-1703, 11-1704.

## **SUBCHAPTER 2 — ARKANSAS UNIFORM TRANSFERS TO MINORS ACT**

#### **SECTION.**

- 9-26-201. Definitions.
- 9-26-202. Scope and jurisdiction.
- 9-26-202. Scope and jurisdiction.
- 9-26-203. Nomination of custodian.
- 9-26-204. Transfer by gift or exercise of power of appointment.
- 9-26-205. Transfer authorized by will or trust.
- 9-26-206. Other transfer by fiduciary.
- 9-26-207. Transfer by obligor.
- 9-26-208. Receipt for custodial property.
- 9-26-209. Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control.
- 9-26-209. Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control.
- 9-26-210. Single custodianship.
- 9-26-211. Validity and effect of transfer.
- 9-26-212. Care of custodial property.
- 9-26-213. Powers of custodian.

#### **SECTION.**

- 9-26-214. Use of custodial property.
- 9-26-215. Custodian's expenses — Compensation — Bond.
- 9-26-216. Exemption of a third person from liability.
- 9-26-217. Liability to third persons.
- 9-26-218. Renunciation, resignation, death, or removal of custodian — Designation of successor custodian.
- 9-26-219. Accounting by and determination of liability of custodian.
- 9-26-220. Termination of custodianship.
- 9-26-221. Applicability.
- 9-26-221. Applicability.
- 9-26-222. Effect on existing custodianships.
- 9-26-223. Uniformity of application and construction.
- 9-26-224. Short title.
- 9-26-225. Severability.
- 9-26-226. Effective date.
- 9-26-227. Repealer.
- 9-26-227. Repealer.

## **RESEARCH REFERENCES**

**Ark. L. Rev.** Haught, 1988 Update to the Arkansas Probate System: An Over-

view of Recent Developments in Arkansas Probate Practice, 42 Ark. L. Rev. 631.

Holmes, Overview of Recent Tax Law Changes Affecting Estate Planning Administration, 42 Ark. L. Rev. 671.

**U. Ark. Little Rock L.J.** Allison, The Uniform Transfers to Minors Act, etc., 10 U. Ark. Little Rock L.J. 339.

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## 9-26-201. Definitions.

As used in this subchapter:

(1) "Adult" means an individual who has attained the age of twenty-one (21) years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means any circuit court of competent jurisdiction.

(6) "Custodial property" means (i) any interest in property transferred to a custodian under this subchapter; and (ii) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under § 9-26-209 or successor or substitute custodian designated under § 9-26-218.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one (21) years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under § 9-26-209.

(16) "Transferor" means a person who makes a transfer under this subchapter.



(17) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

**History.** Acts 1985, No. 476, § 1; A.S.A. 1947, § 50-934.

## RESEARCH REFERENCES

**Ark. L. Rev.** Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

### 9-26-202. Scope and jurisdiction.

(a) This subchapter shall apply to a transfer that refers to this subchapter in the designation under § 9-26-209(a) by which the transfer is made if at the time of the transfer, the transferor, minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this subchapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this subchapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under this subchapter, the Uniform Gifts to Minors Act [repealed], or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

**History.** Acts 1985, No. 476, § 2; A.S.A. 1947, § 50-935.      **History.** Kansas Uniform Gifts to Minors Act, Acts 1967, No. 250, see § 9-26-227.

**Publisher's Notes.** As to repeal of Ar-

### 9-26-202. Scope and jurisdiction.

(a) This subchapter shall apply to a transfer that refers to this subchapter in the designation under § 9-26-209(a) by which the transfer is made if at the time of the transfer, the transferor, minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this subchapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this subchapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under this subchapter, the Uniform Gifts to Minors Act [repealed], or a substan-

tially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

**History.** Acts 1985, No. 476, § 2; A.S.A.      Kansas Uniform Gifts to Minors Act, Acts 1947, § 50-935.      1967, No. 250, see § 9-26-227.

**Publisher's Notes.** As to repeal of Ar-

### **9-26-203. Nomination of custodian.**

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for .... (name of minor) under the Arkansas Uniform Transfers to Minors Act." The nomination may name one (1) or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under § 9-26-209(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under § 9-26-209. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to § 9-26-209.

**History.** Acts 1985, No. 476, § 3; A.S.A. 1947, § 50-936.

### **9-26-204. Transfer by gift or exercise of power of appointment.**

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to § 9-26-209.

**History.** Acts 1985, No. 476, § 4; A.S.A. 1947, § 50-937.

**9-26-205. Transfer authorized by will or trust.**

(a) A personal representative or trustee may make an irrevocable transfer pursuant to § 9-26-209 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under § 9-26-203 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under § 9-26-203, or all persons so nominated as a custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under § 9-26-209.

**History.** Acts 1985, No. 476, § 5; A.S.A. 1947, § 50-938.

**9-26-206. Other transfer by fiduciary.**

(a) Subject to subsection (c) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to § 9-26-209, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to § 9-26-209.

(c) A transfer under subsection (a) or (b) of this section may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds ten thousand dollars (\$10,000) in value.

**History.** Acts 1985, No. 476, § 6; A.S.A. 1947, § 50-939.

**9-26-207. Transfer by obligor.**

(a) Subject to subsections (b) and (c) of this section, a person not subject to § 9-26-205 or § 9-26-206 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 9-26-209.

(b) If a person having the right to do so under § 9-26-203 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under § 9-26-203, or all persons so nominated as custodian die before the transfer or are unable,



decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars (\$10,000) in value.

**History.** Acts 1985, No. 476, § 7; A.S.A. 1947, § 50-940.

### **9-26-208. Receipt for custodial property.**

A written acknowledgment of delivery by a custodian shall constitute a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this subchapter.

**History.** Acts 1985, No. 476, § 8; A.S.A. 1947, § 50-941.

### **9-26-209. Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control.**

(a) Custodial property is created and a transfer is made whenever:  
(1) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b) of this section;

(2) money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act";

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of

a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act";

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act";

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act"; or

(7) an interest in any property not described in paragraphs (1)-(6) of this section is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form shall satisfy the requirements of paragraphs (a)(1)(ii) and (7) of this section:

**"TRANSFER UNDER THE ARKANSAS  
UNIFORM TRANSFERS TO MINORS ACT**

I, ..... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: .....

\_\_\_\_\_  
(Signature of Custodian)"

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

**History.** Acts 1985, No. 476, § 9; A.S.A. 1947, § 50-942.

**9-26-209. Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control.**

(a) Custodial property is created and a transfer is made whenever:  
(1) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b) of this section;

(2) money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”;

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”;

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than transferor, or a trust company, whose name in the notification is followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”;

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”;

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:



“as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: “as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act”; or

(7) an interest in any property not described in paragraphs (1)-(6) of this section is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form shall satisfy the requirements of paragraphs (a)(1)(ii) and (7) of this section:

**“TRANSFER UNDER THE ARKANSAS  
UNIFORM TRANSFERS TO MINORS ACT**

I, ..... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for ..... (name of minor) under the Arkansas Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).  
Dated: .....

\_\_\_\_\_  
(Signature of Custodian)”

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

**History.** Acts 1985, No. 476, § 9; A.S.A. 1947, § 50-942.

**9-26-210. Single custodianship.**

A transfer may be made only for one (1) minor, and only one (1) person may be the custodian. All custodial property held under this subchapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

**History.** Acts 1985, No. 476, § 10; A.S.A. 1947, § 50-943.

**9-26-211. Validity and effect of transfer.**

(a) The validity of a transfer made in a manner prescribed in this subchapter shall not be affected by:

(1) failure of the transferor to comply with § 9-26-209(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under § 9-26-209(a); or

(3) death or incapacity of a person nominated under § 9-26-203 or designated under § 9-26-209 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to § 9-26-209 shall be irrevocable, and the custodial property shall be indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this subchapter, and neither the minor nor the minor's legal representative shall have any right, power, duty, or authority with respect to the custodial property except as provided in this subchapter.

(c) By making a transfer, the transferor shall incorporate in the disposition all the provisions of this subchapter and shall grant to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this subchapter.

**History.** Acts 1985, No. 476, § 11;  
A.S.A. 1947, § 50-944.

## **9-26-212. Care of custodial property.**

(a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest shall be so identified if it is recorded, and custodial property subject to registration shall be so identified if it is either registered, or held in an account designated, in the name of the

custodian, followed in substance by the words: "as a custodian for .... (name of minor) under the Arkansas Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen (14) years.

**History.** Acts 1985, No. 476, § 12;  
A.S.A. 1947, § 50-945.

### **9-26-213. Powers of custodian.**

(a) A custodian, acting in a custodial capacity, shall have all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of § 9-26-212.

**History.** Acts 1985, No. 476, § 13;  
A.S.A. 1947, § 50-946.

### **9-26-214. Use of custodial property.**

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of fourteen (14) years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and shall not affect any obligation of a person to support the minor.

**History.** Acts 1985, No. 476, § 14;  
A.S.A. 1947, § 50-947.

### **9-26-215. Custodian's expenses — Compensation — Bond.**

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under § 9-26-204, a custodian shall have a non-cumulative election during each calendar year to



charge reasonable compensation for services performed during that year.

(c) Except as provided in § 9-26-218(f), a custodian shall not be required to give a bond.

**History.** Acts 1985, No. 476, § 15;  
A.S.A. 1947, § 50-948.

### **9-26-216. Exemption of a third person from liability.**

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, shall not be responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this subchapter for, any act of the purported custodian;
- (3) the validity or propriety under this subchapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) the propriety of the application of any property of the minor delivered to the purported custodian.

**History.** Acts 1985, No. 476, § 16;  
A.S.A. 1947, § 50-949.

### **9-26-217. Liability to third persons.**

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian shall not be personally liable:

- (1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
- (2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor shall not be personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

**History.** Acts 1985, No. 476, § 17;  
A.S.A. 1947, § 50-950.

**9-26-218. Renunciation, resignation, death, or removal of custodian — Designation of successor custodian.**

(a) A person nominated under § 9-26-203 or designated under § 9-26-209 as custodian may decline to serve by delivering a valid disclaimer in the form prescribed by § 28-2-106 [repealed] to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under § 9-26-203, the person who made the nomination may nominate a substitute custodian under § 9-26-203; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under § 9-26-209(a). The custodian so designated shall have the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under § 9-26-204 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor shall not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen (14) years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen (14) years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen (14) years or fails to act within sixty (60) days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the

conservator of the minor, or the minor if the minor has attained the age of fourteen (14) years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under § 9-26-204 or to require the custodian to give appropriate bond.

**History.** Acts 1985, No. 476, § 18;  
A.S.A. 1947, § 50-951.

### **9-26-219. Accounting by and determination of liability of custodian.**

(a) A minor who has attained the age of fourteen (14) years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under § 9-26-217 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this subchapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under § 9-26-218(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

**History.** Acts 1985, No. 476, § 19;  
A.S.A. 1947, § 50-952.

### **9-26-220. Termination of custodianship.**

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of twenty-one (21) years of age with respect to custodial property transferred under § 9-26-204 or § 9-26-205, except that any transferor may have custodial property transferred to the minor at any time after the age of eighteen (18) years and before twenty-one (21) years by a designation in the following words or their equivalent: "The custodian shall transfer this property to .... (name of minor) when .... (he or she) reaches the age of ..... (age, after eighteen (18) years and before twenty-one (21) years, at which transfer takes place)";

(2) the minor's attainment of age eighteen (18) years with respect to custodial property transferred under § 9-26-206 or § 9-26-207; or

(3) the minor's death.



**History.** Acts 1985, No. 476, § 20;  
A.S.A. 1947, § 50-953.

### **9-26-221. Applicability.**

This subchapter shall apply to a transfer within the scope of § 9-26-202 made after March 21, 1985, if:

(1) the transfer purports to have been made under the Uniform Gifts to Minors Act [repealed]; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation “as custodian under the Uniform Gifts to Minors Act [repealed]” or “as custodian under the Uniform Transfers to Minors Act” of any other state, and the application of this subchapter is necessary to validate the transfer.

**History.** Acts 1985, No. 476, § 21;      kansas Uniform Gifts to Minors Act, Acts  
A.S.A. 1947, § 50-954.                      1967, No. 250, see § 9-26-227.

**Publisher's Notes.** As to repeal of Ar-

### **9-26-221. Applicability.**

This subchapter shall apply to a transfer within the scope of § 9-26-202 made after March 21, 1985, if:

(1) the transfer purports to have been made under the Uniform Gifts to Minors Act [repealed]; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation “as custodian under the Uniform Gifts to Minors Act [repealed]” or “as custodian under the Uniform Transfers to Minors Act” of any other state, and the application of this subchapter is necessary to validate the transfer.

**History.** Acts 1985, No. 476, § 21;      kansas Uniform Gifts to Minors Act, Acts  
A.S.A. 1947, § 50-954.                      1967, No. 250, see § 9-26-227.

**Publisher's Notes.** As to repeal of Ar-

### **9-26-222. Effect on existing custodianships.**

(a) Any transfer of custodial property as now defined in this subchapter made before March 21, 1985, shall be validated notwithstanding that there was no specific authority in the Arkansas Uniform Gifts to Minors Act [repealed] for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This subchapter shall apply to all transfers made before March 21, 1985, in a manner and form prescribed in the Arkansas Uniform Gifts to Minors Act [repealed], except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on March 21, 1985.

(c) Sections 9-26-201 and 9-26-220, with respect to the age of a minor for whom custodial property is held under this subchapter, shall not apply to custodial property held in a custodianship that terminated

because of the minor's attainment of the age of majority under prior law and before March 21, 1985.

**History.** Acts 1985, No. 476, § 22; Kansas Uniform Gifts to Minors Act, Acts A.S.A. 1947, § 50-955. 1967, No. 250, see § 9-26-227.

**Publisher's Notes.** As to repeal of Ar-

### **9-26-223. Uniformity of application and construction.**

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

**History.** Acts 1985, No. 476, § 23; A.S.A. 1947, § 50-956.

### **9-26-224. Short title.**

This subchapter may be cited as the "Arkansas Uniform Transfers to Minors Act".

**History.** Acts 1985, No. 476, § 24; A.S.A. 1947, § 50-933.

### **9-26-225. Severability.**

If any provisions of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end provisions of this subchapter are severable.

**History.** Acts 1985, No. 476, § 25.

### **9-26-226. Effective date.**

It has been found that Acts 1967, No. 250 limits the kinds of properties that may be transferred to the custodian of a minor and there is a need to expand the kinds of properties that may be the subject of a gift to a minor's custodian. Therefore, an emergency is hereby declared to exist and this subchapter, being immediately necessary for the preservation of the free flow of commerce, shall be in full force and effect from and after March 21, 1985.

**History.** Acts 1985, No. 476, § 26; Kansas Uniform Gifts to Minors Act, Acts A.S.A. 1947, § 50-933n. 1967, No. 250, see § 9-26-227.

**Publisher's Notes.** As to repeal of Ar-

### **9-26-227. Repealer.**

Acts 1967, No. 250, the Arkansas Uniform Gifts to Minors Act, is hereby repealed. To the extent that this subchapter, by virtue of § 9-26-222(b), does not apply to transfers made in a manner prescribed

in the Arkansas Uniform Gifts to Minors Act [repealed] or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the Arkansas Uniform Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities. All other laws and parts of laws in conflict with this subchapter are hereby repealed.

**History.** Acts 1985, No. 476, § 27;  
A.S.A. 1947, § 50-954n.

### **9-26-227. Repealer.**

Acts 1967, No. 250, the Arkansas Uniform Gifts to Minors Act, is hereby repealed. To the extent that this subchapter, by virtue of § 9-26-222(b), does not apply to transfers made in a manner prescribed in the Arkansas Uniform Gifts to Minors Act [repealed] or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the Arkansas Uniform Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities. All other laws and parts of laws in conflict with this subchapter are hereby repealed.

**History.** Acts 1985, No. 476, § 27;  
A.S.A. 1947, § 50-954n.

## **SUBCHAPTER 3 — UNIFORM SECURITIES OWNERSHIP BY MINORS ACT**

### **SECTION.**

9-26-301. Definitions.

9-26-302. Liability for dealing with minor.

9-26-303. Disaffirmation of transaction by minor.

### **SECTION.**

9-26-304. Construction.

9-26-305. Title.

9-26-306. Severability.

9-26-307. Repealer.

### **9-26-301. Definitions.**

In this subchapter, unless the context otherwise requires:

(a) "Bank" is a bank, trust company, national banking association, savings bank, or industrial bank;

(b) "Broker" is a person, including a bank, lawfully engaged in the business of effecting transactions in securities for the account of others and includes a broker lawfully engaged in buying and selling securities for his own account;

(c) "Issuer" is a person who places or authorizes the placing of his name on a security other than as a transfer agent to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

(d) "Person" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or



association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity;

(e) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payment out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate or interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing;

(f) "Third-party" is a person other than a bank, broker, transfer agent, or issuer who with respect to a security held by a minor effects a transaction otherwise than directly with the minor;

(g) "Transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of securities, in the issue of new securities, or in the cancellation of surrendered securities.

**History.** Acts 1963, No. 530, § 1; A.S.A. 1947, § 50-922.

### **9-26-302. Liability for dealing with minor.**

A bank, broker, issuer, third-party, or transfer agent incurs no liability by reason of his treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third-party, or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third-party, or transfer agent had actual knowledge of the minority of the holder of the security. Except as otherwise provided in this subchapter, such a bank, broker, issuer, third-party, or transfer agent may assume without inquiry that the holder of a security is not a minor.

**History.** Acts 1963, No. 530, § 2; A.S.A. 1947, § 50-923.

### **9-26-303. Disaffirmation of transaction by minor.**

A minor, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third-party, or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the

transaction the bank, broker, issuer, third-party, or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third-party, or transfer agent had actual knowledge of the minority of the holder.

**History.** Acts 1963, No. 530, § 3; A.S.A. 1947, § 50-924.

### **9-26-304. Construction.**

This subchapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

**History.** Acts 1963, No. 530, § 4; A.S.A. 1947, § 50-925.

### **9-26-305. Title.**

This subchapter may be cited as the Uniform Securities Ownership by Minors Act.

**History.** Acts 1963, No. 530, § 5; A.S.A. 1947, § 50-921.

### **9-26-306. Severability.**

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

**History.** Acts 1963, No. 530, § 6; A.S.A. 1947, § 50-925n.

### **9-26-307. Repealer.**

All laws and parts of laws in conflict with this subchapter are hereby repealed.

**History.** Acts 1963, No. 530, § 7; A.S.A. 1947, § 50-925n.

## **CHAPTER 27**

## **JUVENILE COURTS AND PROCEEDINGS**

### **SUBCHAPTER.**

- 1. GENERAL PROVISIONS.**
- 2. JUVENILE OFFICERS. [REPEALED.]**
- 3. ARKANSAS JUVENILE CODE.**

## SUBCHAPTER

4. DIVISION OF DEPENDENCY-NEGLECT REPRESENTATION.
5. EXTENDED JUVENILE JURISDICTION.
6. COMMUNITY MENTAL HEALTH SERVICES FOR JUVENILES.

## RESEARCH REFERENCES

- Am. Jur.** 47 Am. Jur. 2d, Juv. Cts., § 1 43 C.J.S., Infants, §§ 42, 51, 52, 64, 84,  
et seq. 196 et seq.
- C.J.S.** 22 C.J.S., Crim Law, §§ 211, 67A C.J.S., Parent & C, § 6.  
1508.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 9-27-101. Appointment of supervisor of  
juvenile court work.
- 9-27-102. Legislative determinations.

## SECTION.

- 9-27-103. Continuity of educational ser-  
vices to foster children.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Effective Dates.** Acts 1939, No. 280, § 41: Mar. 10, 1939.

Acts 1941, No. 274, § 8: approved Mar. 26, 1941. Emergency clause provided: "It is found by the General Assembly that the Social Security Board or other federal agencies cooperating with the State of Arkansas in aiding and assisting the aged, the blind, crippled children, etc., require a merit system or civil service plan for the employees of the Welfare Department who are paid in whole or in part with federal funds; that the Social Security Act requires that such records of said Department as concern assistance matters be held and treated as confidential; that the preservation of the public

peace, health and safety require this act to go into effect without delay; an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1995, No. 1337, § 14: Apr. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that in instances where a determination is to be made as to whether a child should remain in an abusive home, that decision should be made based upon the best interest in the child; that this act so provides; and that this act should go into effect as soon as possible so that the standard is made clear immediately that the best interest of the child should always be the paramount consideration in determining whether a child is to remain in an abusive home. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 9-27-101. Appointment of supervisor of juvenile court work.

The Director of the Department of Human Services is authorized and



empowered to appoint a supervisor of juvenile court work and such other employees as may be necessary, over which organization, supervisor, and employees the Department of Human Services shall have exclusive direction and control.

**History.** Acts 1939, No. 280, § 38; 1941, No. 274, § 7; A.S.A. 1947, § 83-143.

**Publisher's Notes.** The first sentence of Acts 1939, No. 280, § 38, transferred the organization and supervision of the Juvenile Court Department from the Attorney General's Office to the State Department of Public Welfare. The State

Department of Public Welfare was subsequently transferred by a Type 2 transfer pursuant to Acts 1971, No. 38, § 12, to the Department of Social and Rehabilitative Services. Acts 1977, No. 383, § 2, changed the name of the Department of Social and Rehabilitative Services to the Department of Human Services.

### 9-27-102. Legislative determinations.

The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings. The best interests of the child shall be the standard for recommendations made by employees of the Department of Human Services and for juvenile court determinations as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

**History.** Acts 1995, No. 1337, § 1.

**A.C.R.C. Notes.** Acts 2007, No. 643, § 1, provided:

"(a) The purpose of this act is to request that the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth:

"(1) Study the juvenile justice system regarding juveniles who have been committed to the Division of Youth Services of the Department of Health and Human Services or who are otherwise being detained in juvenile detention centers;

"(2) Evaluate the educational outcomes of these juveniles; and

"(3) Report the findings to the House Interim Committee on Education and the Senate Interim Committee on Education.

"(b) The House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate In-

terim Committee on Children and Youth shall conduct an investigation under this section by utilizing data, reports, and testimony provided from all of the stakeholders involved in this system, including, but not limited to:

"(1) The Director of the Division of Youth Services of the Department of Human Services;

"(2) The Commissioner of Education of the Department of Education;

"(3) The Director of the Administrative Office of the Courts;

"(4) A representative from the Juvenile Ombudsman Division of the Arkansas Public Defender Commission;

"(5) Disability rights advocates with knowledge of special education needs; and

"(6) Any other stakeholders involved in the delivery of services to juveniles committed to the juvenile justice system."

RESEARCH REFERENCES

Ark. L. Rev. Note, What About the Child?: A Critique of Linker-Flores v. Arkansas Department of Human Services, 60 Ark. L. Rev. 353.

CASE NOTES

ANALYSIS

Americans with Disabilities Act. Judicial Authority.

Americans with Disabilities Act.

Rights of a parent under the Americans with Disabilities Act, 42 U.S.C. § 12132, must be subordinated to the protected rights of a child, consistent with the mandate in this section that all juvenile court proceedings be viewed in terms of what is in the best interest of the child. J.T. v. Arkansas Dep't of Human Servs., 329 Ark. 243, 947 S.W.2d 761 (1997).

Judicial Authority.

Trial court did not unlawfully delegate judicial authority to therapists who denied parent visitation with child only during periods when court and therapists determined contact would be detrimental to child, because therapists must be given some discretion in carrying out orders of the court where a child's emotional, mental or physical health is at stake. J.T. v. Arkansas Dep't of Human Servs., 329 Ark. 243, 947 S.W.2d 761 (1997).

9-27-103. Continuity of educational services to foster children.

(a)(1)(A) It is the intent of the General Assembly that children in foster care:

- (i) Be entitled to the same opportunities to meet the academic achievement standards to which all children are held;
- (ii) Be assisted so that they are able to remain in their schools;
- (iii) Be placed in the least restrictive education placement; and
- (iv) Have the same access to academic resources, services, and extracurricular enrichment activities as all other children.

(B) Decisions regarding the education of children in foster care are to be based on the best interests of the children.

(2)(A) The following individuals who are directly involved in the care, custody, and education of foster children should work together to ensure continuity of educational services to foster children, including, but not limited to:

- (i) Educators;
- (ii) The Department of Human Services;
- (iii) The Department of Education;
- (iv) The circuit courts presiding over the foster care cases;
- (v) Providers of services to foster children;
- (vi) Attorneys;
- (vii) Court-appointed special advocates; and
- (viii) Parents, guardians, or any person appointed by the court.

(B) The individuals in subdivision (a)(2)(A) of this section shall ensure the continuity of educational services so that foster children:

- (i) Remain in their schools of current enrollment whenever possible;

(ii) Are moved to new schools in a timely manner when it is determined to be necessary, appropriate, and in their best interests under this section;

(iii) Participate in the appropriate educational programs; and

(iv) Have access to the academic resources, services, and extracurricular enrichment activities that are available to all pupils.

(b)(1) Foster children shall have continuity in their educational placements.

(2) The Department of Human Services shall consider continuity of educational services and school stability in making foster placement decisions.

(3) The local school district shall allow the foster child to remain in the child's current school and continue his or her education unless the court finds that:

(A) The placement is not in the child's best interest; and

(B) It conflicts with any other provision of current law, excluding the residency requirement pursuant to § 6-18-202.

(4) To the extent reasonable and practical, the school district is encouraged to work out a plan for transportation for the child to remain in the child's current school.

(5) Except for emergencies, prior to making a recommendation to move a child from his or her current school, the Department of Human Services shall provide to the following a written explanation that states the basis for the recommended school change and how it serves the child's best interest:

(A) The foster child;

(B) The child's attorney ad litem;

(C) The court-appointed special advocate, if appointed; and

(D) Parents, guardians, or any person appointed by the court.

(6)(A) If the court transfers custody of a child to the Department of Human Services, the court shall issue an order containing the following determinations regarding the child's educational issues:

(i) Whether the child's parent or guardian may have access to the child's school records;

(ii) Whether the child's parent or guardian who has access to the child's school records may obtain information on the current placement of the child, including the name and address of the child's foster parent or provider; and

(iii) Whether the child's parent or guardian may participate in school conferences or similar activities at the child's school.

(B) If the court transfers custody of a child to the Department of Human Services, the court may appoint an individual to consent to an initial evaluation of the child and serve as the child's surrogate parent under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on February 1, 2007.

(c)(1) Every school district shall identify a foster care liaison.

(2) The school district shall forward the name of each foster care liaison and the contact information to the Special Education Section of the Department of Education at the beginning of each school year.



(3) The foster care liaison shall:

(A) Ensure and facilitate the timely school enrollment of foster children; and

(B)(i) Assist foster children when transferring schools by ensuring the transfer of credits, records, grades, and any other relevant school records.

(ii)(a) Expedite the transfer of records.

(b) When a foster child changes school placement, the foster care liaison in the new school shall request the child's education record, as defined by the Department of Education's regulation, from the foster care liaison in the child's previous school within three (3) school days.

(iii) The foster care liaison from the previous school shall provide all relevant school records to the new school within ten (10) school days of receipt of the request under subdivision (c)(3)(C)(ii)(b) of this section.

(d)(1) If a foster child is subject to a school enrollment change, then the foster child's caseworker shall contact the school district foster care liaison within two (2) business days, and the new school must immediately enroll the foster child even if the foster child is unable to produce any required clothing or required records, including, but not limited to:

(A) Academic records;

(B) Medical records; or

(C) Proof of residency.

(2) The Department of Human Services shall provide all known information to the school district that would have an impact upon the health and safety of the child being enrolled or others in the school.

(e)(1) A school district shall recognize the rights of a foster parent to make education decisions for a foster child pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., if the foster parent is qualified.

(2) A foster parent may have educational rights with respect to consenting to the individualized educational program and related services if the court has specifically limited the educational rights of the parent and the child is in foster care.

(f) The grades of a child in foster care may not be lowered due to absence from school because of:

(1) A change in the child's school enrollment;

(2) The child's attendance at a dependency-neglect court proceeding;

or

(3) The child's attendance at court-ordered counseling or treatment.

(g) Each school district shall accept credit course work when the child demonstrates that he or she has satisfactorily completed the appropriate education placement assessment.

(h) If a child completes the graduation requirements of his or her school district while being detained in a juvenile detention facility or while being committed to the Division of Youth Services of the Department of Human Services, the school district that the child last attended

before the child's detention or commitment shall issue the child a diploma.

(i) Nothing in this section shall be interpreted to be in conflict with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

(j) Notwithstanding any of the provisions of this section, if it is in the best interests of the child, a foster child may be placed in a nonpublic school, including a private, parochial, or home school as long as no state or federal funding is used for such placement.

**History.** Acts 2005, No. 1255, § 1; 2007, No. 587, § 1.

**Amendments.** The 2007 amendment added (b)(6).

## SUBCHAPTER 2 — JUVENILE OFFICERS

### SECTION.

9-27-201 — 9-27-206. [Repealed.]

### 9-27-201 — 9-27-206. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 1997, No. 1171, § 3. The subchapter was derived from the following sources:

9-27-201. Acts 1985, No. 550, § 1; A.S.A. 1947, § 45-701.

9-27-202. Acts 1985, No. 550, § 2; A.S.A. 1947, § 45-702.

9-27-203. Acts 1985, No. 550, §§ 3, 4;

A.S.A. 1947, §§ 45-703, 45-704; Acts 1997, No. 250, § 52.

9-27-204. Acts 1985, No. 550, § 5; A.S.A. 1947, § 45-705.

9-27-205. Acts 1985, No. 550, § 6; A.S.A. 1947, § 45-706.

9-27-206. Acts 1985, No. 550, § 7; A.S.A. 1947, § 45-707.

## SUBCHAPTER 3 — ARKANSAS JUVENILE CODE

### SECTION.

9-27-301. Title.

9-27-302. Purposes — Construction.

9-27-303. Definitions.

9-27-304. Provisions supplemental.

9-27-305. Applicability.

9-27-306. Jurisdiction.

9-27-307. Venue.

9-27-308. Personnel — Duties.

9-27-309. Confidentiality of records.

9-27-310. Commencement of proceedings.

9-27-311. Required contents of petition.

9-27-312. Notification to defendants.

9-27-313. Taking into custody.

9-27-314. Emergency orders.

9-27-315. Probable cause hearing.

9-27-316. Right to counsel.

9-27-317. Waiver of right to counsel — Detention of juvenile — Questioning.

9-27-318. Filing and transfer to the criminal division of circuit court.

### SECTION.

9-27-319. Double jeopardy.

9-27-320. Fingerprinting or photographing.

9-27-321. Statements not admissible.

9-27-322. Release from custody.

9-27-323. Diversion — Conditions — Agreement — Completion.

9-27-324. Preliminary investigation.

9-27-325. Hearings — Generally.

9-27-326. Detention hearing.

9-27-327. Adjudication hearing.

9-27-328. Removal of juvenile.

9-27-329. Disposition hearing.

9-27-330. Disposition — Delinquency — Alternatives.

9-27-331. Disposition — Delinquency — Limitations.

9-27-332. Disposition — Family in need of services — Generally.

9-27-333. Disposition — Family in need of services — Limitations.

## SECTION.

- 9-27-334. Disposition — Dependent-neglected — Generally.
- 9-27-335. Disposition — Dependent-neglected — Limitations.
- 9-27-336. Limitations on detention.
- 9-27-337. Six-month reviews required.
- 9-27-338. Permanency planning hearing.
- 9-27-339. Probation — Revocation.
- 9-27-340. [Repealed.]
- 9-27-341. Termination of parental rights.
- 9-27-342. Proceedings concerning illegitimate juveniles.
- 9-27-343. Appeals.
- 9-27-344. Monthly report.
- 9-27-345. Admissibility of evidence.
- 9-27-346. Support orders.
- 9-27-347. Probation reports.
- 9-27-348. Publication of proceedings.
- 9-27-349. Compliance with federal acts.
- 9-27-350. Compacts to share costs.
- 9-27-351. Escape considered an act of delinquency.

## SECTION.

- 9-27-352. [Repealed.]
- 9-27-353. Duties and responsibilities of custodian.
- 9-27-354. Progress reports on juveniles.
- 9-27-355. Placement of juveniles.
- 9-27-356. Juvenile sex offender assessment and registration.
- 9-27-357. Deoxyribonucleic acid samples.
- 9-27-358. [Repealed.]
- 9-27-359. Fifteenth-month review hearing.
- 9-27-360. Review of termination of parental rights.
- 9-27-361. Court reports.
- 9-27-362. Emancipation of juveniles.
- 9-27-363. Foster youth transition.
- 9-27-364. Division of Youth Services aftercare.
- 9-27-365. No reunification hearing.
- 9-27-366. Confessions.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes “all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts....”

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Publisher's Notes.** Former §§ 9-27-301 — 9-27-345, concerning the Arkansas Juvenile Code of 1975, were repealed by Acts 1989, No. 273, § 47. They were derived from the following sources:

9-27-301. Acts 1975, No. 451, § 1; A.S.A. 1947, § 45-401.

9-27-302. Acts 1975, No. 451, § 2; 1979, No. 26, § 2; 1979, No. 815, § 10; A.S.A. 1947, §§ 45-402, 45-402.1, 45-406.

9-27-303. Acts 1975, No. 451, § 3; 1979, No. 815, § 2; A.S.A. 1947, § 45-403.

9-27-304. Acts 1975, No. 451, § 48; A.S.A. 1947, § 45-448.

9-27-305. Acts 1975, No. 451, § 4; A.S.A. 1947, § 45-404.

9-27-306. Acts 1975, No. 451, §§ 5, 6; 1979, No. 26, § 2; 1979, No. 815, §§ 8, 9; A.S.A. 1947, §§ 45-405 — 45-406.2.

9-27-307. Acts 1975, No. 451, § 5; A.S.A. 1947, § 45-405.

9-27-308. Acts 1975, No. 451, § 7; A.S.A. 1947, § 45-407.

9-27-309. Acts 1975, No. 451, § 42; A.S.A. 1947, § 45-442.

9-27-310. Acts 1975, No. 451, §§ 8, 9, 40; 1977, No. 447, § 1; A.S.A. 1947, §§ 45-408, 45-409, 45-440.

9-27-311. Acts 1975, No. 451, §§ 10, 11; A.S.A. 1947, §§ 45-410, 45-411.

9-27-312. Acts 1975, No. 451, § 12; A.S.A. 1947, § 45-412.

9-27-313. Acts 1975, No. 451, § 14; A.S.A. 1947, § 45-414.

9-27-314. Acts 1975, No. 451, § 15; A.S.A. 1947, § 45-415.

9-27-315. Acts 1975, No. 451, § 17; 1979, No. 815, § 3; A.S.A. 1947, § 45-417.

9-27-316. Acts 1975, No. 451, § 18; 1979, No. 815, § 3; 1981, No. 244, § 1; A.S.A. 1947, § 45-418.

9-27-317. Acts 1975, No. 451, § 19; 1979, No. 815, § 3; A.S.A. 1947, § 45-419.

9-27-318. Acts 1975, No. 451, § 13; 1981, No. 394, § 1; 1985, No. 425, § 2; 1985, No. 672, § 2; A.S.A. 1947, § 45-413; Acts 1987, No. 752, § 1.

9-27-319. Acts 1975, No. 451, § 13; 1981, No. 394, § 1; A.S.A. 1947, § 45-413.

9-27-320. Acts 1981, No. 393, §§ 1, 2; A.S.A. 1947, §§ 45-453, 45-454.

9-27-321. Acts 1981, No. 396, § 1; A.S.A. 1947, § 45-411.1.



9-27-322. Acts 1981, No. 396, § 1; A.S.A. 1947, § 45-411.1.

9-27-323. Acts 1981, No. 396, § 1; A.S.A. 1947, § 45-411.1.

9-27-324. Acts 1975, No. 451, § 20; 1981, No. 397, § 1; A.S.A. 1947, § 45-420.

9-27-325. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-326. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-327. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-328. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-329. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-330. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-331. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.

9-27-332. Acts 1975, No. 451, § 22; A.S.A. 1947, § 45-422.

9-27-333. Acts 1975, No. 451, § 37; A.S.A. 1947, § 45-437.

9-27-334. Acts 1975, No. 451, § 38; 1979, No. 815, § 4; 1981, No. 112, § 1; A.S.A. 1947, § 45-438.

9-27-335. Acts 1975, No. 451, §§ 23, 24; 1979, No. 694, §§ 1, 2; A.S.A. 1947, §§ 45-422.1, 45-423, 45-424.

9-27-336. Acts 1975, No. 451, § 25; 1979, No. 694, §§ 1, 3; A.S.A. 1947, §§ 45-422.1, 45-425.

9-27-337. Acts 1975, No. 451, § 26; A.S.A. 1947, § 45-426.

9-27-338. Acts 1975, No. 451, § 27; A.S.A. 1947, § 45-427.

9-27-339. Acts 1975, No. 451, § 30; A.S.A. 1947, § 45-430.

9-27-340. Acts 1975, No. 451, § 28; A.S.A. 1947, § 45-428.

9-27-341. Acts 1975, No. 451, § 28; A.S.A. 1947, § 45-428.

9-27-342. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1983, No. 404, § 1; A.S.A. 1947, § 45-436.

9-27-343. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; A.S.A. 1947, § 45-436.

9-27-344. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; A.S.A. 1947, § 45-436; Acts 1987, No. 673, § 1.

9-27-345. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; A.S.A. 1947, § 45-436.

Former §§ 9-27-346 — 9-27-356, concerning child placement, were repealed by Acts 1989, No. 273, § 47. They were derived from the following sources:

9-27-346. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-347. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-348. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-349. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-350. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-351. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-352. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-353. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-354. Acts 1979, No. 815, § 1; A.S.A. 1947, § 45-450.

9-27-355. Acts 1975, No. 451, § 32; A.S.A. 1947, § 45-432.

9-27-356. Acts 1975, No. 451, §§ 6, 35; 1979, No. 26, § 2; A.S.A. 1947, §§ 45-406, 45-435.

Former sections 9-27-357 and 9-27-358 have been renumbered as §§ 9-27-346 and 9-27-347, respectively.

Former §§ 9-27-359 — 9-27-363, concerning juvenile courts and proceedings, were repealed by Acts 1989, No. 273, § 47. They were derived from the following sources:

9-27-359. Acts 1975, No. 451, § 40; 1977, No. 447, § 1; A.S.A. 1947, § 45-440.

9-27-360. Acts 1975, No. 451, § 29; A.S.A. 1947, § 45-429.

9-27-361. Acts 1975, No. 451, § 41; 1979, No. 815, § 7; 1981, No. 804, § 1; A.S.A. 1947, §§ 45-441, 45-441.1.

9-27-362. Acts 1975, No. 451, § 47; A.S.A. 1947, § 45-447; Acts 1987, No. 783, § 1.

9-27-363. Acts 1975, No. 451, § 44; A.S.A. 1947, § 45-444.

Former §§ 9-27-364 — 9-27-366 have been renumbered as §§ 9-27-348, 9-27-349, and 9-27-350, respectively.

Former § 9-27-367, concerning contributing to the delinquency of a minor, was repealed by Acts 1989, No. 273, § 47. The section was derived from Acts 1975, No.

451, § 45; A.S.A. 1947, § 45-445. For present law, see § 5-27-209.

Former § 9-27-368 has been renumbered as § 9-27-351.

**Cross References.** Jurisdiction of district courts to incarcerate juvenile defendants, § 16-17-133.

**Preambles.** Acts 2005, No. 1176 contained a preamble which read: "Whereas, the Arkansas Child Maltreatment Act, Arkansas Code § 12-12-501 et seq., is the law that allows doctors and hospital staff to report child abuse and neglect to the Arkansas State Police Child Abuse Hotline; and

"Whereas, the Arkansas State Police Child Abuse Hotline is a twenty-four-hour toll-free service that triggers the initiation of an investigation of child maltreatment; and

"Whereas, currently, the Arkansas State Police Child Abuse Hotline will not accept reports related to newborn children being born with an illegal substance present in their system as a result of the pregnant mother's use before birth of an illegal substance or with a health problem as a result of the pregnant mother's use before birth of an illegal substance; and

"Whereas, in order for the newborn child to be protected by the Arkansas Child Maltreatment Act and receive services, the Arkansas State Police Child Abuse Hotline must accept reports of this nature; and

"Whereas, this act is necessary to clarify the law so that the Arkansas State Police Child Abuse Hotline can accept reports of this nature and so that the newborn children can be provided services to protect their health and safety.

"Now therefore,..."

**Effective Dates.** Acts 1989, No. 273, § 49: Aug. 1, 1989.

Acts 1989 (3rd Ex. Sess.), No. 34, § 6: Nov. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that since the passage of Act 273 of 1989 there has arisen the need to clarify that certain cases brought by the prosecuting attorney or the Department of Human Services have traditionally been brought without the necessity of payment of a filing fee to the court clerk; that additional confusion has arisen over an unnecessary requirement that the prosecuting attorney accompany delinquency petitions with a supporting affida-

vit of facts; that these two requirements constitute a burden on the juvenile justice system of this state; that it is in the best interests of all citizens of this state that these matters be clarified; that this act should become effective immediately upon its passage to alleviate these concerns. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 76, § 4: Nov. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Juvenile Code of 1989 has unreasonably restricted law enforcement officers in their ability to detain juveniles alleged to have committed delinquent acts, that federal requirements permit holding an alleged juvenile for up to twenty-four (24) hours, that it is imperative that law enforcement officers be permitted to hold juveniles longer in order to determine whether the juvenile should be detained or released prior to adjudication. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 763, § 8: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary to prohibit the unnecessary incarceration of juveniles, to prohibit such juveniles from being treated as criminals, to place such juveniles under proper care; and that the immediate passage of this act is necessary for the protection of juveniles. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation and protection of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 11 and 36, § 5: Aug. 22, 1994, Aug. 25, 1994, respectively. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas, meeting in the Second Extraordinary Session of 1994, that the current definition of 'delinquent juvenile' in the Juvenile Code does not include a juvenile who possesses a handgun and,



possession of a handgun being a delinquent act, it is necessary immediately to amend the definition. Therefore, in order to amend the definition of 'delinquent juvenile' to include a juvenile who possesses a handgun, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 39 and 40, § 5: Aug. 25, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that the number of serious offenses committed by juveniles has increased dramatically and that the discretion of prosecuting attorneys to charge serious juvenile offenders in circuit court should be broadened in order to deal effectively with those juveniles. Therefore, in order to invest prosecuting attorneys immediately with additional discretion to charge serious juvenile offenders in circuit court, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 55 and 56, § 7: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas, meeting in the Second Extraordinary Session of 1994, that a serious shortage of juvenile detention facilities exists and that there is an urgent need to provide for a longer permissible period during which a juvenile may be held in an adult jail; that in order to enable counties to detain larger numbers of juveniles during the time necessary for such counties to construct additional juvenile detention facilities, the Governor needs authority to grant temporary waivers of certain restrictions on the manner of detaining juveniles; that possession of handguns and other unlawful weapons by juveniles is widespread and such possession contributes greatly to the incidence of violent crimes committed by juveniles; that serious measures are needed to remove handguns and other unlawful weapons from the hands of juveniles and to stop such possession; and that

the authority of law enforcement officers to take juveniles into custody needs to be clarified. Therefore, in order to extend the time juveniles may be held in an adult jail; to invest the Governor with authority to grant temporary waivers of certain restrictions on the detention of juveniles; to immediately authorize the seizure, forfeiture, and destruction of unlawful weapons possessed by juveniles; to authorize the seizure and forfeiture of any vehicle in which a minor unlawfully possesses a weapon; to require detention of any juvenile who possesses a handgun or machine gun; and to clarify the authority of law enforcement officers to take juveniles into custody, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 61 and 62, § 8: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to address the problem of juvenile crime it is necessary to authorize the commitment of delinquent juveniles to juvenile detention facilities; that present law now limits to two thousand dollars (\$2,000) the amount a juvenile can be required to pay as restitution to victims, and that amount is becoming increasingly too low; that this act remedies both situations and should go into effect immediately in order to better protect the citizens of this state from the acts of delinquent juveniles and more adequately compensate the victims through restitution. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 67 and 68, § 5: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that the present law requiring the written agreement of a parent, guardian, or custodian before a juvenile taken into custody on an allegation of delinquency may waive counsel and make a statement severely hampers the ability of law en-



forcement officers to question detained juveniles. It is further found that confusion exists as to the authority of law enforcement officers to question juvenile witnesses without the prior approval of a parent, guardian, or custodian. Therefore, in order to immediately allow juveniles taken into custody to waive counsel and make a statement under the same standard as adult arrestees, and to clarify the authority of law enforcement officers to take statements of juvenile witnesses, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 69 and 70, § 7: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that serious criminal offenses committed by juveniles have increased to an alarming level and that to deal effectively with serious juvenile crime prosecuting attorneys have any urgent need to learn of previous juvenile adjudications for which a juvenile could have been charged as an adult, that records of serious juvenile offenses need to be retained for an increased period of time, that school officials and victims need to be allowed to have information concerning the disposition of juvenile offenders, that the burden of proof necessary to revoke a juvenile delinquent's probation should be lessened and the court's dispositional alternatives upon revocation of parole broadened, and that the Arkansas Crime Information Center needs immediate authority to maintain fingerprints and other records of juvenile delinquency adjudications. Therefore, in order to immediately accomplish the above-listed objectives, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 909, § 5: Apr. 5, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that parental rights should be terminated in certain instances of severe sexual and physical abuse in order to protect the welfare of the child; that this

act so provides; that this act should go into effect immediately in order to grant maximum protection to minors as soon as possible. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1337, § 14: Apr. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that in instances where a determination is to be made as to whether a child should remain in an abusive home, that decision should be made based upon the best interest in the child; that this act so provides; and that this act should go into effect as soon as possible so that the standard is made clear immediately that the best interest of the child should always be the paramount consideration in determining whether a child is to remain in an abusive home. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1227, § 19: Apr. 7, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an important public interest in providing quality representation to juveniles and parents in dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is further determined that children are the state's most treasured future resource and recent studies indicate that children and their parents have not always received quality representation and sometimes have gone without representation in dependency-neglect proceedings in the past because the counties of Arkansas have been unable to provide adequate representation due to lack of funding and uniform application of the law. To insure the best interests of Arkansas' children in achieving a safe and permanent home, to comply with federal law mandating appointment of guardians ad litem in dependency-neglect cases, and to prevent the loss of federal funding, a statewide system for quality dependency-neglect representation must be established. Therefore an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 401, § 20: Mar. 4, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that in November, 1997, the United States Congress passed Public Law 105-89, the Adoption and Safe Families Act. The primary emphasis of the act is ensuring that the health and safety of children is the paramount concern by the child welfare agency and the court in making decisions about the life of a child. The requirements in this state law are a requirement for continued federal funding of child welfare services in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 874, § 3: Mar. 15, 2005. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that it is the best interest of the children of Arkansas that the effectiveness of this act shall be immediate; that in the event of an extension of the regular session, the delay in the effective date of this act could do irreparable harm to the children of this state as well as to interfere with the proper administration and provision of essential governmental programs; and that this act is immediately necessary to ensure that the placement of children removed from their homes is made in the best interests of the children who are removed from their homes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1176, § 6: Mar. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that, currently, the Arkansas State Police Child Abuse Hotline will not accept reports related to newborn children being born with an illegal substance present in their blood or urine as a result of the pregnant mother's use before birth of an illegal substance or with a health problem as a result of the pregnant mother's use before birth of an illegal substance; that in order for the newborn child to be protected by the Arkansas Child Maltreatment Act and receive services, the Arkansas State Police Child Abuse Hotline must accept reports of this nature; and that this act is immediately necessary to clarify the law so that the Arkansas State Police Child Abuse Hotline can accept reports of this nature and so that the newborn children can be provided services to protect their health and safety. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the



bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 257, § 2: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that juveniles who have committed an offense prior to eighteen (18) years of age are not charged in the juvenile division of circuit court because an adjudication in the juvenile division of circuit court cannot always be scheduled before the juvenile turns eighteen (18) years of age, despite the fact that the juvenile division of circuit court can continue jurisdiction up to twenty-one (21) years of age; that, as a result, juveniles who would normally be charged in the juvenile division of circuit court are being charged in the criminal division of circuit court; and that this act is immediately necessary because under current law, a juvenile who commits a misdemeanor has no legal consequence because the prosecutor does not have the authority to charge a juvenile misdemeanor in the criminal division of circuit court. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 1022, § 6: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is a critical need for judicial intervention and support for effective treatment programs that reduce the incidence of drug use, drug addiction, and family separation due to parental substance abuse and drug-related crimes; that this act expands drug court programs and creates the Drug Court Advisory Committee; and that this act is immediately necessary because any delay in the expansion of drug court programs or the creation of the Drug Court Advisory Committee will harm citizens of this state who will benefit from judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Therefore, an emer-

gency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 334, § 2: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that safety of students is of paramount importance to the state; that knowledge of juvenile safety plans are required by court order, the juvenile's school district must be made aware to ensure the safety of all students; and that this act is immediately necessary to allow school districts to address safety concerns in the schools as quickly and efficiently as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become



effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**A.L.R.** Double jeopardy: applicability to juvenile court proceedings. 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 A.L.R.4th 1211.

Right of juvenile court defendant to be represented during court proceedings by parent. 11 A.L.R.4th 719.

Criminal responsibility of parent for act of child. 12 A.L.R.4th 673.

Possibility of rehabilitation affecting whether offender is tried as adult. 22 A.L.R.4th 1162.

Validity and efficacy of minor's waiver of right to counsel — modern cases. 25 A.L.R.4th 1072.

Delay in arraignment affecting admissibility of confession or other statement made by defendant. 28 A.L.R.4th 1121.

Relief available for violation of right to counsel at sentencing in state criminal trial. 65 A.L.R.4th 183.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense. 66 A.L.R.4th 985.

Defense of infancy in juvenile delinquency proceedings. 83 A.L.R.4th 1135.

Propriety of conditioning probation on defendant's submission to polygraph or other lie detector testing. 86 A.L.R.4th 709.

Propriety of conditioning probation on defendant's submission to drug testing. 87 A.L.R.4th 929.

Minor's entry into home of parent as sufficient to sustain a burglary charge. 17 A.L.R.5th 111.

Statutes protecting minors in a specified age range from rape or other sexual activity as applicable to defendant minor

within protected age group. 18 A.L.R.5th 856.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings. 37 A.L.R.5th 703.

Propriety of exclusion of press or other media representatives from civil trial. 39 A.L.R.5th 103.

Validity, construction and application of juvenile escape statutes. 46 A.L.R.5th 523.

Confidential communications between relatives other than husband and wife, testimonial privilege. 62 A.L.R.5th 629.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings. 74 A.L.R.5th 453.

**Am. Jur.** 47 Am. Jur. 2d, Juv. Cts., § 29 et seq.

**Ark. L. Notes.** Brummer, A Statutory Primer: The Arkansas Juvenile Code, 1986 Ark. L. Notes 59.

**C.J.S.** 43 C.J.S., Infants, § 31 et seq.

**Ark. L. Rev.** Note, Choosing the Forum: Prosecutorial Discretion and Walker v. State, 46 Ark. L. Rev. 985.

Recent Development: Right to Counsel — Termination of Parental Rights, 58 Ark. L. Rev. 753.

**U. Ark. Little Rock L.J.** Legislative Survey, Juvenile Law, 4 U. Ark. Little Rock L.J. 599.

Survey of Arkansas Law: Family Law, 6 U. Ark. Little Rock L.J. 159.

Casey, Arkansas Juvenile Courts: Do Law Judges Satisfy Due Process in Delinquency Cases?, 6 U. Ark. Little Rock L.J. 501.

Arkansas' Missed Opportunity for Rehabilitation: Sending Children to Adult Courts, 20 U. Ark. Little Rock L.J. 77.

## CASE NOTES

## ANALYSIS

Applicability.  
Criminal Rules.  
Discretion of Prosecutor.

**Applicability.**

The offense of driving while under the influence of intoxicants is a "traffic offense," and under the Juvenile Code the municipal court has jurisdiction to hear such cases. *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990).

The Juvenile Code and its provisions apply only to proceedings in juvenile court. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994), rehearing denied, 315 Ark. 658, 875 S.W.2d 814 (1994).

Where juvenile had been arrested on a circuit court felony bench warrant, but neither the abstract nor transcript showed a copy of an indictment or information setting out the felony offenses with which the juvenile was charged, the juvenile had not been charged with a felony in circuit court as an adult when the law officers interrogated him and gained his confession; thus, the Juvenile Code was applicable at the time juvenile gave his statement, and his statement was therefore inadmissible at trial be-

cause the law enforcement officer's conduct failed to comport with required Juvenile Code procedures when they obtained juvenile's confession. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994), rehearing denied, 315 Ark. 658, 875 S.W.2d 814 (1994).

**Criminal Rules.**

The structure and purpose of former subchapter made it incompatible with relief within the scope of A.R.Cr.P. 37, which contemplates the trial, conviction, and sentencing of an adult prisoner under the criminal code. *Robinson ex rel. Robinson v. Shock*, 282 Ark. 262, 667 S.W.2d 956 (1984) (decision under prior law).

**Discretion of Prosecutor.**

This subchapter provides that, when a case involves a juvenile 16 years of age or older, and the alleged act would constitute a felony if committed by an adult, the prosecuting attorney has the discretion to file a petition in juvenile court alleging delinquency, or to file charges in circuit court and to prosecute as an adult. *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994).

**Cited:** *Arkansas Dep't of Human Servs. v. Bailey*, 318 Ark. 374, 885 S.W.2d 677 (1994).

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**9-27-301. Title.**

This subchapter shall be known and may be cited as the "Arkansas Juvenile Code of 1989".

**History.** Acts 1989, No. 273, § 1.

## CASE NOTES

**Funding of Court.**

Where circuit and chancery judge issued an order setting the salaries of the judicial district's probation officer and intake officer at \$18,000.00 per year, and petitioners, members of the county quorum court, voted to pay county's share of the salary, but at the rate of only \$15,000.00 per year, petitioners did not

fail to fund the court, there was no showing that level of funding was so low that the court could not effectively operate and the inherent authority doctrine did not apply. *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

**Cited:** *Patterson v. R.T.*, 301 Ark. 400, 784 S.W.2d 777 (1990); *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990).

**9-27-302. Purposes — Construction.**

This subchapter shall be liberally construed to the end that its purposes may be carried out:

(1) To assure that all juveniles brought to the attention of the courts receive the guidance, care, and control, preferably in each juvenile's own home when the juvenile's health and safety are not at risk, that will best serve the emotional, mental, and physical welfare of the juvenile and the best interest of the state;

(2)(A) To preserve and strengthen the juvenile's family ties when it is in the best interest of the juvenile;

(B) To protect a juvenile by considering the juvenile's health and safety as the paramount concerns in determining whether or not to remove the juvenile from the custody of his or her parents or custodians, removing the juvenile only when the safety and protection of the public cannot adequately be safeguarded without such removal;

(C) When a juvenile is removed from his or her own family, to secure for him or her custody, care, and discipline with primary emphasis on ensuring the health and safety of the juvenile while in the out-of-home placement; and

(D) To assure, in all cases in which a juvenile must be permanently removed from the custody of his or her parents, that the juvenile be placed in an approved family home and be made a member of the family by adoption;

(3) To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution, recognizing that the application of sanctions that are consistent with the seriousness of the offense is appropriate in all cases; and

(4) To provide means through which the provisions of this subchapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

**History.** Acts 1989, No. 273, § 2; 1999, No. 401, § 1; 2007, No. 587, § 2.

**Amendments.** The 2007 amendment deleted "as nearly as possible equivalent

to that which should have been given by his or her parents" following "discipline" in (2)(C).

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 911.



## CASE NOTES

## ANALYSIS

Purpose.  
Applicability.

**Purpose.**

Trial court properly terminated the parental rights of the mother and father under § 9-27-341 and found that each parent, either as the offender or as the accomplice, had committed a felony battery against a grandson of the mother because the mother's story that she was not involved was implausible considering the medical testimony; termination was in the child's best interests under § 9-27-341(b)(3)(A)(i) and (ii) given that the child was a dependent-neglected child under § 9-27-303(18)(A), and one purpose of

subdivision (2)(B) of this section was to protect a juvenile's safety. *Todd v. Ark. Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004).

**Applicability.**

Nowhere in this section is it suggested, or even implied, that the provisions of this subchapter are applicable to an unborn fetus still in its mother's womb. *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

**Cited:** *Arkansas Dep't of Human Servs. v. Clark*, 304 Ark. 403, 802 S.W.2d 461 (1991); *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991); *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

**9-27-303. Definitions.**

As used in this subchapter:

(1) "Abandoned infant" means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant;

(2) "Abandonment" means:

(A) Failure of the parent to provide reasonable support and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future and support or maintain regular contact with a juvenile without just cause; or

(B) An articulated intent to forego parental responsibility;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment

of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Urinating or defecating on a child;

(e) Pinching, biting, or striking a child in the genital area;

(f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) Narcotics; or

(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

(i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C) "Abuse" shall not include:

(i) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(ii) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(a) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policies and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger of hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

(f)(1) The restraint is for a reasonable period of time; and

(2) The restraint is in conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Adjudication hearing" means a hearing to determine whether the allegations in a petition are substantiated by the proof;

(5) "Adult sentence" means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507, for the act or acts for which the juvenile was adjudicated delinquent as an extended juvenile jurisdiction offender;

(6) "Aggravated circumstances" means:

(A) A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, or sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(B) A child has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10)(A) "Cash assistance" means short-term financial assistance.



(B) "Cash assistance" does not include:

(i) Long-term financial assistance or financial assistance that is the equivalent of the board payment or adoption subsidy; or

(ii) Financial assistance for car insurance;

(11) "Commitment" means an order of the court that places a juvenile in the physical custody of the Division of Youth Services of the Department of Human Services for placement in a youth services facility;

(12) "Court" means the juvenile division of circuit court;

(13) "Court-appointed special advocate" means a volunteer appointed by the court to provide services to juveniles in dependency-neglect proceedings;

(14) "Custodian" means a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order;

(15) "Delinquent juvenile" means any juvenile:

(A) Ten (10) years old or older who has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state or who has violated § 5-73-119; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(16)(A) "Department" means the Department of Human Services and its divisions and programs.

(B) Unless otherwise stated in this subchapter, any reference to the department shall include all of its divisions and programs;

(17) "Dependent juvenile" means:

(A) A child of a parent who is in the custody of the department;

(B)(i) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child.

(ii) If the reason for the incarceration is related to the health, safety, or welfare of the child, the child is not a dependent juvenile but may be dependent-neglected;

(C) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(D) A child whose custodial parent dies and no appropriate relative or friend is willing or able to provide care for the child;

(E) A child who is an infant relinquished to the custody of the department for the sole purpose of adoption;

(F) A safe haven baby, § 9-34-201 et seq.; or

(G) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them;

(18)(A) "Dependent-neglected juvenile" means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

- (i) Abandonment;
- (ii) Abuse;
- (iii) Sexual abuse;
- (iv) Sexual exploitation;
- (v) Neglect;
- (vi) Parental unfitness; or
- (vii) Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

(B) "Dependent-neglected juvenile" includes dependent juveniles;

(19) "Detention" means the temporary care of a juvenile in a physically restricting facility other than a jail or lock-up used for the detention of adults prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency;

(20) "Detention hearing" means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act or acts should be released or held prior to adjudication or disposition;

(21) "Deviant sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(22) "Disposition hearing" means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependency-neglect cases;

(23) "Extended juvenile jurisdiction offender" means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;

(24) "Family in need of services" means any family whose juvenile evidences behavior that includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian; or

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(25)(A) "Family services" means relevant services provided to a juvenile or his or her family, including, but not limited to:

- (i) Child care;
- (ii) Homemaker services;
- (iii) Crisis counseling;
- (iv) Cash assistance;
- (v) Transportation;

- (vi) Family therapy;
- (vii) Physical, psychiatric, or psychological evaluation;
- (viii) Counseling; or
- (ix) Treatment.

(B) Family services are provided in order to:

(i) Prevent a juvenile from being removed from a parent, guardian, or custodian;

(ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed; or

(iii) Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile;

(26) "Fast track" means that reunification services will not be provided or will be terminated before twelve (12) months of services;

(27)(A) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then "forcible compulsion" has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(28) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(29)(A) "Home study" means a written report that is obtained after an investigation of a home by the department or other appropriate persons or agencies and that shall conform to regulations established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received.

(C)(i) The person or agency conducting the home study shall have the right to obtain a criminal background check on any person in the household sixteen (16) years of age and older, including a fingerprint-based check of national crime information databases.

(ii) Upon request, local law enforcement shall provide the person or agency conducting the home study with criminal background information on any person in the household sixteen (16) years of age and older;

(30) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;



(31) "Independence" means a permanency planning hearing disposition known as Another Planned Permanent Living Arrangement (AP-PLA) for the juvenile who will not be reunited with his or her family and because another permanent plan is not in the juvenile's best interest;

(32) "Juvenile" means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction;

(33) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(34) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses;

(35) "Miranda rights" means the requirement set out in *Miranda v. Arizona*, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

(36)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, that constitute:

(i) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(ii) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, excluding failure to follow an individualized education program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;

(v) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility; or

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm.

(B)(i) "Neglect" shall also include :

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) For the purposes of this subdivision (36)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(b) of this section;

(37)(A) "Notice of hearing" means a notice that describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel, if indigent, or a uniform notice as developed and prescribed by the Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

(38) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order;

(39)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other than placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement when the court has ordered

that the placement be made permanent and ordered that no further reunification services or six-month reviews are required.

(B) "Out-of-home placement" shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(40) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(41) "Paternity hearing" means a proceeding brought pursuant to bastardy jurisdiction to determine the biological father of a juvenile;

(42) "Pornography" means:

(A) Pictures, movies, and videos lacking serious literary, artistic, political, or scientific value that when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(43)(A) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement that may be part of the disposition;

(44) "Prosecuting attorney" means an attorney who is elected as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney;

(45) "Protection plan" means a written plan developed by the department in conjunction with the family and support network to protect the juvenile from harm and which allows the juvenile to remain safely in the home;

(46) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims or is alleged to be the biological father of the juvenile;

(47)(A)(i) "Reasonable efforts" means efforts to preserve the family prior to the placement of a child in foster care to prevent the need for removing the child from his or her home and efforts to reunify a



family made after a child is placed out of his or her home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(B) The juvenile division of circuit court may deem that reasonable efforts have been made when the court has found that the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

- (i) Subjected the child to aggravated circumstances;
- (ii) Committed murder of any child;
- (iii) Committed manslaughter of any child;
- (iv) Aided or abetted, attempted, conspired, or solicited to commit the murder or the manslaughter;
- (v) Committed a felony battery that results in serious bodily injury to any child;
- (vi) Had the parental rights involuntarily terminated as to a sibling of the child; or
- (vii) Abandoned an infant as defined in subdivision (1) of this section.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(48) "Residence" means:

- (A) The place where the juvenile is domiciled; or
- (B) The permanent place of abode where the juvenile spends an aggregate of more than six (6) months of the year;

(49)(A) "Restitution" means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(50) "Safety plan" means a plan ordered by the court to be developed for an adjudicated delinquent sex offender under § 9-27-356 who is at moderate or high risk of reoffending for the purposes of § 9-27-309;

(51) "Sexual abuse" means:

(A) By a person ten (10) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse or deviant sexual activity or sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live human sexual activity;

(B) By a person eighteen (18) years of age or older to a person who is younger than sixteen (16) years of age and is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact; or

(ii) Attempted sexual intercourse, deviant sexual activity, or sexual contact;

(C) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact; or

(ii) Attempted sexual intercourse, deviant sexual activity, or sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing listening to a phone sex line; or

(vi) An act of voyeurism;

(D) By a person younger than ten (10) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(52)(A) "Sexual contact" means any act of sexual gratification involving:

(i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;

(ii) Encouraging the juvenile to touch the offender in a sexual manner; or

(iii) Requesting the offender to touch the juvenile in a sexual manner.

(B) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment.

(C) This section shall not permit normal, affectionate hugging to be construed as sexual contact;

(53) "Sexual exploitation" includes:

(A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:

(i) Prostitution;

(ii) Obscene photographing; or

(iii) Obscene filming; or

(B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

(54) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities pursuant to an order for placement pending or pursuant to an adjudication of dependency-neglect or family in need of services;

(55) "Trial placement" means that custody of the juvenile remains with the department, but the juvenile is returned to the home of a parent or the person from whom custody was removed for a period not to exceed sixty (60) days;

(56) "UCCJEA" means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(57) "UIFSA" means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(58) "Victim" means any person or entity entitled to restitution as defined in subdivision (49) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(59)(A) "Voyeurism" means looking for the purpose of sexual arousal or gratification into a private location or place in which a juvenile may reasonably be expected to be nude or partially nude.

(B) This definition does not apply to delinquency actions;

(60) "Youth services center" means a youth services facility operated by the state or a contract provider; and

(61) "Youth services facility" means a facility operated by the state or its designee for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

**History.** Acts 1989, No. 273, § 3; 1993, No. 468, § 4; 1993, No. 1126, §§ 1, 2; 1993, No. 1227, § 1; 1994 (2nd Ex. Sess.), No. 11, § 1; 1994 (2nd Ex. Sess.), No. 36, § 1; 1995, No. 532, §§ 1-4; 1995, No. 804, § 1; 1995, No. 811, § 2; 1995, No. 1261, § 13; 1997, No. 208, § 8; 1997, No. 1227, § 1; 1999, No. 401, §§ 2-4; 1999, No. 1192, § 12; 1999, No. 1340, §§ 1-7, 35; 2001, No. 1503, § 1; 2001, No. 1610, § 1; 2003, No. 1166, § 2; 2003, No. 1319, §§ 1-8; 2005, No. 1176, § 3; 2005, No. 1191, § 1; 2005, No. 1990, § 1; 2007, No. 587, §§ 3-9; 2009, No. 956, § 5.

**A.C.R.C. Notes.** As to legislative intent of Acts 1997, No. 208, see § 22-4-408.

Acts 2005, No. 1176, § 1, provided: "This act shall be known and may be cited as 'Garrett's Law: To Provide Services to a Newborn Child Born with an Illegal Sub-

stance Present in the Child's System'."

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2005 amendment by No. 1176 in (35) [now (36)], inserted the subsection (A) designation; redesignated former (A) through (G) as present (i) through (vii); and added (B).

The 2005 amendment by No. 1191 added (17)(A)(vii) [now (18)(A)(vii)].

The 2005 amendment by No. 1990 added (10) and (47) and redesignated the remaining subsections accordingly; added



“and without justifiable cause” in (3)(A)(vi); inserted “biting” in (3)(A)(vii)(e); added (3)(A)(vii)(f) through (3)(A)(vii)(j); added present (17)(G); in present (32), added (B) and deleted former (B) and (C); deleted “or rejected” at the end of present (36)(A)(ii); added “including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile” in present (36)(A)(iv); substituted “creating a dangerous situation or situation that puts the juvenile at risk of harm” for “which put the juvenile in danger” in present (36)(A)(vii); inserted “signed an acknowledgment of paternity pursuant to § 9-10-120 or who has” in present (40); rewrote present (42); added “or sexual contact by forcible compulsion” in (49)(A)(ii); deleted “or solicitation” following “sexual contact” in (49)(B)(i) and (49)(C)(i); in present (50), inserted (A)(i)(b) and (A)(i)(c), deleted former (A)(ii) and inserted present (A)(ii), and inserted the (B) designation; and in present (51), inserted the (A), (A)(i) through (A)(iii), and (B) designations, and inserted “obscenely posing, or obscenely posturing” in (B).

The 2007 amendment substituted “three (3) or more” for “more than three (3)” in (6)(B); deleted “under eighteen (18)

years of age and is” following “who is” in (17)(A); added “the following acts or omissions to the juvenile, a sibling, or another juvenile” in (18)(A); deleted “to the juvenile, a sibling, or another juvenile” following “unfitness” in (18)(A)(vi); added (29)(C) and (50)(D)(iii) and (iv) and made related changes; substituted “sixty (60)” for “thirty (30)” in (54); and added present (49).

The 2009 amendment rewrote (2); inserted (3)(C)(ii)(f)(2), (17)(B)(ii), (45), and (51)(C)(iii) through (51)(C)(vi), deleted (51)(D) and (55), and redesignated subdivisions accordingly; rewrote (10)(B); inserted “physical” in (11); substituted “no appropriate relative or friend is willing or able to provide care for the child” for “no stand-by guardian exists” in (17)(D); rewrote (31) and (36)(B); deleted “or assault” following “battery” in (47)(C); in (50), inserted “under § 9-27-356” and substituted “§ 9-27-309” for “§ 9-27-356”; deleted “sibling or” following “By a” in (51)(C); inserted “or the person from whom custody was removed” in (55); rewrote (59); and made related and minor stylistic changes.

**Cross References.** Handguns — Possession by minor or possession on school property, § 5-73-119.

Voluntary placement of a child, § 9-34-201 et seq.

## RESEARCH REFERENCES

**Ark. L. Rev.** Comment: The Perpetuation of Illusory Rights in the Arkansas Juvenile Code, 57 Ark. L. Rev. 275 (2004).

**U. Ark. Little Rock L. Rev.** Annual

Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 911.

## CASE NOTES

### ANALYSIS

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### Constitutionality.

Subdivision (15)(A) of this section, which sets out the age of a juvenile offender and defines the type of behavior that will cause one to be classified as a delinquent juvenile, is not facially void, as under the definition a juvenile would only have to look to the criminal code and city ordinances to determine what constitutes proscribed acts. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, *Manatt v. Arkansas*, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

**Appeal.**

After trial court entered order finding that child was a member of a family in need of services the father attempted to appeal on the child's behalf but he was not a licensed attorney who could represent the child on an appeal, and the matter was not a final order. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

**Custodian.**

Department of Human Services is a custodian for purposes of the provision assessing costs and restitution, in §§ 9-27-330 and 9-27-331. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

The mere status of stepfather does not entitle that person to notice and participation in the question of protective services or custody; something more must be shown to qualify as standing in loco parentis under subdivision (14) of this section. *Stair v. Phillips*, 315 Ark. 429, 867 S.W.2d 453 (1993).

**Delinquent Juvenile.**

Construing "minor in possession of a handgun" in violation of § 5-73-119(a)(1) in tandem with the grant of jurisdiction to juvenile court in § 9-27-306(a)(1) and the definition of "delinquent juvenile" in subdivision (15) of this section, provides the juvenile court with jurisdiction of the handgun charge. *Jones v. State*, 319 Ark. 762, 894 S.W.2d 591 (1995).

**Dependent-Neglect Adjudication.**

A dependent-neglect adjudication is a hearing to determine whether allegations in a petition are substantiated by the proof, and its thrust is the protection of a juvenile who is at substantial risk of serious harm. *Fariss v. State*, 303 Ark. 541, 798 S.W.2d 103 (1990).

Child of parent with bipolar disorder held to be dependent-neglected. *Johnston v. Arkansas Dep't of Human Servs.*, 55 Ark. App. 392, 935 S.W.2d 589 (1996).

A newborn infant was properly found to be a dependent-neglected juvenile where the infant's older sister was seriously abused by the mother and/or the father; even if one of the parents could successfully deflect blame for the actual injuries the sister suffered to the other parent, the uncontroverted testimony established that such injuries were noticeable and inflicted over a long period of time, so that

the parent who did not actually inflict the injuries was still unfit on the basis that he or she did not notice obvious signs of abuse. *Brewer v. Arkansas Dep't of Human Servs.*, 32 S.W.3d 22 (Ct. App. 2000), substituted opinion, *Brewer v. Ark. Dep't of Human Servs.*, 71 Ark. App. 364, 43 S.W.3d 196 (2001).

The trial court properly found that an infant was a dependent-neglected juvenile where there was overwhelming evidence that his sister was abused by one or both of his parents and that her injuries were noticeable and inflicted over a long period of time. *Brewer v. Arkansas Dep't of Human Servs.*, 32 S.W.3d 22 (Ct. App. 2000), substituted opinion, *Brewer v. Ark. Dep't of Human Servs.*, 71 Ark. App. 364, 43 S.W.3d 196 (2001).

To hold that a court must find that a child is at substantial risk of serious harm on the day of an adjudication would mandate that no child could be found dependent/neglected after being placed into the Arkansas Department of Human Services custody; thus, mother's argument that her children could not have been dependent since they were out of her custody for a year at the time of the filing was rejected as meritless. *Harwell-Williams v. Ark. Dep't of Human Servs.*, 368 Ark. 183, 243 S.W.3d 898 (2006).

Trial court erred in finding that father's child was a dependent-neglected child because, after the father was incarcerated, there were two different family members who stated they were willing to care for the child. *Moiser v. Ark. Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

Trial court did not err in finding that the Department of Health and Human Services failed to meet its burden of proving that children were dependent-neglected because there was no evidence other than the fact that their father had pleaded guilty to sexual assault of other minors. *Ark. HHS v. Mitchell*, 100 Ark. App. 45, 263 S.W.3d 574 (2007).

**Double Jeopardy.**

Defendant's prosecution for incest was not barred by dependent-neglect civil proceeding brought by the Department of Human Services inasmuch as the defendant simply was not threatened with multiple punishments and the double jeopardy clause was not offended. *Fariss v.*



State, 303 Ark. 541, 798 S.W.2d 103 (1990).

### **Family in Need of Services.**

Where children were alleged to have committed burglary and acts of criminal mischief, it was proper to adjudicate the family in need of services. *Byler v. State*, 306 Ark. 37, 810 S.W.2d 941 (1991).

It is entirely clear that by using the words "includes, but is not limited to," the legislature intended a broader concept of a family in need of services than the three illustrations listed in the statute. *Byler v. State*, 306 Ark. 37, 810 S.W.2d 941 (1991).

Where a mother made unsubstantiated sexual abuse allegations, a trial court did not err by awarding custody to a father in a family-in-need-of-services case under § 9-27-338, because it was not in the child's best interest to return to the mother where the child was doing better while not in her custody; moreover, the father did not have to show a material change in circumstances since this was not a regular custody proceeding. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007).

### **Family Services.**

"Family Services" may include ordering the Department of Human Services to pay to have water and electricity turned back on for the mother of a child in order to prevent a juvenile from being removed from the home. *Arkansas Dep't of Human Servs. v. R. P.*, 333 Ark. 516, 970 S.W.2d 225 (1998).

Given that the trial court is empowered to order family services including cash assistance in family-in-need-of-services cases to prevent a juvenile from being removed from a parent, the General Assembly has specifically waived sovereign immunity as to the Department of Human Services in such instances. *Arkansas Dep't of Human Servs. v. R. P.*, 333 Ark. 516, 970 S.W.2d 225 (1998).

Order requiring the Arkansas Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld pursuant to subdivisions (25)(A) and (B) of this section; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child's adoption. *Ark. HHS v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

### **Juvenile.**

Eighteen-year-old defendant seeking transfer to juvenile court argued that because he was seventeen when the alleged offenses occurred, he could be adjudicated delinquent and kept under the watchful eyes of the court until his twenty-first birthday; such argument was held unpersuasive when charges of serious and violent felony offenses remain to be adjudicated and the defendant was already eighteen years of age at the time of the hearing on the motion to transfer. *Brown v. State*, 330 Ark. 603, 954 S.W.2d 273 (1997).

This section clearly defines a juvenile as an individual from birth to age eighteen; thus, the unborn fetus did not fall within the definition and, as a consequence, the lower court judge's order placing the fetus in the custody of the department of health services and requiring that department to render prenatal care constituted a plain, manifest, clear, and gross abuse of discretion. *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

Juvenile was deprived of his right to counsel during a contempt proceeding, even though the juvenile had the services of an attorney ad litem, because the ad litem only represented the best interest of the juvenile, and not the juvenile's due process and other constitutional rights, as a defense attorney would. *Ark. Dep't of Human Servs. v. Mainard*, 358 Ark. 204, 188 S.W.3d 901 (2004).

### **Neglect.**

Where the record reflected a dispute between the mother and the child's doctors about a proper psychological examiner and that, but for Department of Human Services intervention, treatment could have been delayed even more than it was, and the record also indicated that some of the doctors and social workers involved in this case were concerned that the mother would not allow the child to remain at a psychiatric facility for the duration of her treatment, the evidence of "neglect" under subdivisions (18) and (36)(B) of this section was sufficient, even though it may have stemmed from parental motives which could not be characterized as neglectful in the sense of being intended to harm the child or not to care for her. *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721



(1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

Where a mother demonstrated she was an unfit parent and indifferent to the needs of her children by failing to comply with the court's orders to get counseling and disassociate herself with an abusive man, the trial court's decision to terminate her parental rights was supported by clear and convincing evidence; the evidence showed that her husband struck the older child across the face hard enough to leave marks, the mother's house was cold, filled with trash, and smelled like rotting food, and the mother was overheard calling to cancel a counseling session. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Trial court properly terminated the parental rights of the mother and father under § 9-27-341 and found that each parent, either as the offender or as the accomplice, had committed a felony battery against a grandson of the mother because the mother's story that she was not involved was implausible considering the medical testimony; termination was in the child's best interests under § 9-27-341(b)(3)(A)(i) and (ii) given that the child was a dependent-neglected child under subdivision (18)(A) of this section, and one purpose of § 9-27-302(2)(B) was to protect a juvenile's safety. *Todd v. Ark. Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004).

The parent father was found to have neglected his teenagers under subdivision (36)(A)(iv) of this section when he consented to the marriage of his 16 year old daughter to a 34 year old man from another state whom he barely knew. *Porter v. Ark. Dep't of HHS*, 374 Ark. 177, 286 S.W.3d 686 (2008).

### Reunification.

An important goal of the statutory juvenile justice system is reunification of the juvenile with the parent, custodian, or guardian from whom the juvenile has been separated; however, neither subdivision (25)(B) nor subdivision (9) of this section mean that reunification must be achieved if it proves to be against the best interests of the juvenile. *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

A juvenile court could not refuse to order reunification services on the ground

that the parents had abused an older sibling of the child at issue on the basis of its determination that the parents had committed felony assault on the older child; a court of competent jurisdiction was required to determine that the parents had committed felony assault. *Brewer v. Arkansas Dep't of Human Servs.*, 32 S.W.3d 22 (Ct. App. 2000), substituted opinion, *Brewer v. Ark. Dep't of Human Servs.*, 71 Ark. App. 364, 43 S.W.3d 196 (2001).

For the purposes of subdivision (47)(C), the juvenile division of a county chancery court is a court with competent jurisdiction to determine whether a parent has committed such acts as would constitute offenses of the type referred to in that subdivision, and a conviction is not necessary before reunification services can be denied. *Brewer v. Arkansas Dep't of Human Servs.*, 32 S.W.3d 22 (Ct. App. 2000), substituted opinion, *Brewer v. Ark. Dep't of Human Servs.*, 71 Ark. App. 364, 43 S.W.3d 196 (2001).

Where the court terminated a mother's parental right to her oldest child after a two year custody proceeding in which the mother demonstrated she was an unfit parent and indifferent to the needs of her children by failing to comply with the court's orders to get counselling and disassociate herself with an abusive man, the court also properly terminated her parental right to her younger son who had only been in her custody for five months as there was little likelihood that continued services would result in reunification. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Trial court erred in terminating a mother's parental rights where clear and convincing evidence that such was in the best interest of her children was lacking and, instead, the evidence showed that the mother completed parenting classes, began rehabilitative services, obtained an appropriate home and transportation, addressed her medical problems, obtained employment, commenced counseling, and paid her lot rental payments in advance in an effort to achieve stability; further, because the trial court's finding of aggravated circumstances was predicated solely upon a finding of little likelihood that services would result in successful reunification, this ground also failed. *Trout v. Ark. Dep't of Human Servs.*, 84 Ark. App.

446, 146 S.W.3d 895 (2004), rev'd, 359 Ark. 283, 197 S.W.3d 486 (2004).

Termination of parental rights was proper where the circuit court's order found that the parents subjected their minor children to aggravating circumstances and noted that the mother's parental rights were terminated as to another child previously, the children were out of the home for more than twelve months, and the parents failed to remedy the circumstances causing their removal even after being provided with substantial reunification services. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Order terminating parents' rights to their three children was upheld where the parents subjected the children to aggravated circumstances, as provided in § 9-27-341(b)(3)(B)(ix)(a)(3), and the mother's deep-seated psychological problems prevented her from becoming a fit parent in that they caused her to refuse to accept responsibility for her actions; the trial court did not err in finding that there was little likelihood that services to the family would result in successful reunification. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

Parents' argument that the Arkansas Department of Human Services (ADHS) failed to present clear and convincing evi-

dence that it made reasonable efforts to rehabilitate the father was rejected because the ADHS was relieved of the burden to provide reunification services where the father was found to have subjected the daughter to sexual abuse, which was aggravated circumstances under § 9-27-341(b)(3)(B)(ix)(b). *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

#### **Traffic Offenses.**

The offense of driving while under the influence of intoxicants is a "traffic offense," and under the Juvenile Code the municipal court has jurisdiction to hear such cases. *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990); *J.B. v. State*, 309 Ark. 70, 827 S.W.2d 144 (1992).

**Cited:** *Arkansas Dep't of Human Servs. v. Clark*, 304 Ark. 403, 802 S.W.2d 461 (1991); *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991); *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991); *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993); *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993); *Briscoe v. State*, 323 Ark. 4, 912 S.W.2d 425 (1996); *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997); *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

### **9-27-304. Provisions supplemental.**

(a) Unless this subchapter otherwise provides, nothing in this subchapter shall be construed to be in conflict with, to repeal, or to prevent proceedings under any act or statute of this state that may otherwise define any specific act of any person as a crime or misdemeanor, which act might also constitute contributing to the delinquency or dependency of a juvenile, or to prevent or to interfere with proceedings under any such acts.

(b) Nor shall this subchapter be construed to be inconsistent with or to repeal any act providing for the support by parents of their minor children, the taking of indecent liberties with, or selling liquor, tobacco, or firearms to children, or permitting them in prohibited places. Nothing in any such act or similar acts shall be construed to be inconsistent with or repeal this subchapter or prevent proceedings under this subchapter.

**History.** Acts 1989, No. 273, § 45.

### 9-27-305. Applicability.

Any juvenile within this state may be subjected to the care, custody, control, and jurisdiction of the circuit court.

**History.** Acts 1989, No. 273, § 4; 2003, No. 1166, § 3.

**Cross References.** Transition provi-

sions, tenure of present justices and judges, and jurisdiction of present courts, Ark. Const. Amend. 80, § 19.

### CASE NOTES

#### Possession of Handgun.

Regardless of an adult's immunity from prosecution for the mere possession of a handgun, the General Assembly has clearly made the possession of a handgun a misdemeanor offense for juveniles; the juvenile court has jurisdiction of a juve-

nile charged with possession of a handgun. *Lucas v. State*, 319 Ark. 752, 894 S.W.2d 891 (1995).

**Cited:** *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

### 9-27-306. Jurisdiction.

(a)(1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including but not limited to:

(A)(i) Proceedings in which a juvenile is alleged to be delinquent as defined in this subchapter, including juveniles ten (10) to eighteen (18) years of age.

(ii) The court may retain jurisdiction of a juvenile delinquent up to twenty-one (21) years of age if the juvenile committed the delinquent act prior to eighteen (18) years of age;

(B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years of age, except for the following:

(i)(a) A juvenile who has been adjudicated dependent or dependent-neglected prior to eighteen (18) years of age may request the court to continue jurisdiction until twenty-one (21) years of age so long as the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency.

(b) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency.

(c) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from instruction or treatment; or

(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction to receive independent living or transitional services if the juvenile:

(a) Was adjudicated dependent or dependent-neglected;

(b) Was in foster care at eighteen (18) years of age;



(c) Left foster care but desires to submit to the jurisdiction of the court prior to twenty-one (21) years of age to benefit from independent living or transitional services; or

(d) Left foster care and decides to submit to the jurisdiction of the court and return to foster care to receive transitional services, if funding is available.

(C) Proceedings in which emergency custody or a seventy-two-hour hold has been taken on a juvenile under § 9-27-313 or the Child Maltreatment Act, § 12-18-101 et seq.;

(D) Proceedings in which a family is alleged to be in need of services as defined by this subchapter, which shall include juveniles from birth to eighteen (18) years of age, except for the following:

(i) A juvenile whose family has been adjudicated as a family in need of services and who is in foster care before eighteen (18) years of age may request that the court continue jurisdiction until twenty-one (21) years of age if the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month towards self-sufficiency to receive independent living or transitional services;

(ii) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment to receive independent living services; or

(iii) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from the instruction or treatment to receive independent living services;

(E) Proceedings for termination of parental rights for a juvenile under this subchapter;

(F) Proceedings in which custody of a juvenile is transferred to the Department of Human Services;

(G) Proceedings for which a juvenile is alleged to be an extended juvenile jurisdiction offender pursuant to § 9-27-501 et seq.;

(H) Proceedings for which a juvenile is transferred to the juvenile division from the criminal division pursuant to § 9-27-318; and

(I) Custodial placement proceedings filed by the department.

(2) A juvenile shall not under any circumstance remain under the court's jurisdiction past twenty-one (21) years of age.

(3)(A) When the department exercises custody of a juvenile under the Child Maltreatment Act, § 12-18-101 et seq., and a dependency-neglect petition is filed by the department concerning that juvenile, prior to or subsequent to the other legal proceeding any party to that petition may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition.

(B) Upon the motion's being filed, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case.

(4) The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside the State of Arkansas.

(b) The assignment of cases to the juvenile division of circuit court shall be as described by the Supreme Court in Administrative Order Number 14, originally issued April 6, 2001.

(c)(1) The circuit court shall have concurrent jurisdiction with the district court over juvenile curfew violations.

(2) For juvenile curfew violations, the prosecutor may file a family in need of services petition in circuit court or a citation in district court.

(d) The circuit court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state that are transferred to it pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

**History.** Acts 1989, No. 273, § 5; 1993, No. 468, § 5; 1995, No. 533, § 1; 2001, No. 987, § 1; 2001, No. 1262, § 1; 2003, No. 1166, § 4; 2003, No. 1319, § 9; 2005, No. 1191, § 2; 2005, No. 1990, § 2; 2007, No. 257, § 1; 2009, No. 758, §§ 9, 10; 2009, No. 956, § 6.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. Section 19(b)(2) conferred on district courts, "the jurisdiction vested in Municipal Corporation Courts, Police Courts, Justice of the Peace Courts, and Courts of Common Pleas at the time this Amendment takes effect," and state that district courts shall assume the jurisdiction of these courts of limited jurisdiction on January 1, 2005.

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2005 amendment by No. 1191 rewrote (a)(1).

The 2005 amendment by No. 1990 added present (a)(1)(I) and (a)(3)(A).

The 2007 amendment substituted "committed the delinquent act" for "was adjudicated delinquent" in (a)(1)(A)(i), and made related and stylistic changes.

The 2009 amendment by No. 758 substituted "the Child Maltreatment Act, § 12-18-101 et seq." for "§ 12-12-516" in (a)(1)(C) and (a)(3)(A), and made minor stylistic changes.

The 2009 amendment by No. 956 inserted "or is working at least eighty (80) hours a month toward gaining self-sufficiency" and similar language in (a)(1)(B)(i)(a), (a)(1)(B)(i)(b), and (a)(1)(D)(i); inserted "or transitional" in (a)(1)(B)(ii), (a)(1)(B)(ii)(c), and (a)(1)(D)(i); substituted "desires to submit to the jurisdiction of the court" for "decides to return" in (a)(1)(B)(ii)(c); inserted (a)(1)(B)(ii)(d); inserted "prior to or subsequent to the other legal proceedings" in (a)(3)(A); and made related and minor stylistic changes.

**Effective Dates.** Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

## RESEARCH REFERENCES

**Ark. L. Rev.** Note, Waiver and the Special Appearance in Arkansas: Arkansas Department of Human Services v. Faris, 47 Ark. L. Rev. 883.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

## CASE NOTES

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Transfer.

### Constitutionality.

Former statute which provided that the judge of the juvenile court in each county could appoint a referee who had power to hear and pass on all juvenile cases of girls and of boys did not provide for the creation of a new court and thus did not violate Ark. Const., Art. 7 §§ 28 and 29. In *re Giurbino*, 258 Ark. 277, 524 S.W.2d 236 (1975), overruled, *Hutton v. Savage*, 298 Ark. 256, 769 S.W.2d 394 (1989), overruled in part, *Hutton v. Savage*, 298 Ark. 256, 769 S.W.2d 394 (1989) (decision under prior law).

### In General.

The Arkansas Juvenile Code of 1975 did not require that all juveniles, persons under 18 years of age, be charged and tried for criminal acts in juvenile court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

The enactment of the Arkansas Juvenile Code of 1975 in no way interfered with jurisdiction of the chancery court; the chancery courts retained general jurisdiction over the persons and the properties of minors. *Jones v. Jones*, 13 Ark. App. 102, 680 S.W.2d 118 (1984) (decision under prior law).

The juvenile court has exclusive jurisdiction over all of the offenses charged against a juvenile with the exception of those listed in § 9-27-318(b). *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991).

The jurisdiction of the juvenile court is exclusive and original with respect to all offenses charged against a juvenile who is aged 14 years at the time of the commis-

sion of those offenses, with the exception of those offenses enumerated in § 9-27-318(b). *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

In 1989, the General Assembly passed four acts which apply to paternity jurisdiction, which are now codified as § 9-10-101 [repealed], this section, §§ 16-13-304 [repealed], and 16-13-603 [repealed]. *Hall v. Pulaski County Chancery Court*, 320 Ark. 593, 898 S.W.2d 46 (1995).

### Construction.

The term "jurisdiction," as used in § 9-27-318(b), means jurisdiction of the person of the juvenile. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

The statutes of the juvenile court clearly support the conclusion that a direct transfer of a case is effected by a transfer order; the transfer of the case, viewed from the perspective of the transferor court, in the language of § 9-27-318(b)(2) ("transfer the case to juvenile court") (now see § 9-27-318(d)), is mirrored in the language of § 9-27-310(a), which provides, from the perspective of the transferee court, that proceedings in juvenile court "shall be commenced by filing a petition with the clerk of the chancery court or by transfer by another court." *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

### Appealable Order.

Order which recited that the chancery court lacked personal jurisdiction and that any petition for termination of parental rights would have to be filed in another state decisively concluded the right to file for termination of parental rights in Arkansas and was, therefore, final and appealable. *Arkansas Dep't of Human Servs. v. Farris*, 309 Ark. 575, 832 S.W.2d 482 (1992).

### Central Registry of Child Maltreatment.

The juvenile court does not have the statutory authority to order the removal of a name from the central registry of child maltreatment; the responsibility for the placement of names on the registry is vested in the Department of Human Services, and the decision is subject to administrative review. *Arkansas Dep't of Hu-*



man Servs. v. Thomas, 71 Ark. App. 348, 33 S.W.3d 514 (2000).

### **Collateral Attack.**

The exercise of exclusive jurisdiction over juveniles is not a permissible function of the county courts under Ark. Const., Art. 7, §§ 1 and 28, but, since county courts have exercised jurisdiction over juveniles in the past under color of law, their proceedings and judgments may not be collaterally attacked. Walker v. Arkansas Dep't of Human Services, 291 Ark. 43, 722 S.W.2d 558 (1987) (decision under prior law).

### **Consolidated Proceedings.**

Consolidation in juvenile court of divorce proceedings with custody proceedings involving several fathers and an allegation of dependency-neglect upheld to prevent conflicting custody orders within the same judicial district. Lowell v. Lowell, 55 Ark. App. 211, 934 S.W.2d 540 (1996).

### **Criminal Offenses.**

Regardless of an adult's immunity from prosecution for the mere possession of a handgun, the General Assembly has clearly made the possession of a handgun a misdemeanor offense for juveniles; the juvenile court has jurisdiction of a juvenile charged with possession of a handgun. Lucas v. State, 319 Ark. 752, 894 S.W.2d 891 (1995).

Construing "minor in possession of a handgun" in violation of § 5-73-119(a)(1) in tandem with the grant of jurisdiction to juvenile court in subdivision (a)(1) of this section and the definition of "delinquent juvenile" in § 9-27-303(15), provides the juvenile court with jurisdiction of the handgun charge. Jones v. State, 319 Ark. 762, 894 S.W.2d 591 (1995).

### **Custody.**

Where children had been abandoned by parents and temporarily placed by the juvenile court in the custody of the state social services agency, it was proper for custody dispute between social services and parents to be tried in the chancery court while the temporary custody of the children was tried in the juvenile court. Robins v. Arkansas Social Servs., 273 Ark. 241, 617 S.W.2d 857 (1981) (decision under prior law).

Minors are wards of the chancery court, and it is the duty of those courts to make

all orders that will properly safeguard their rights, including the awarding of their custody to persons other than natural parents, if circumstances warrant. Jones v. Jones, 13 Ark. App. 102, 680 S.W.2d 118 (1984) (decision under prior law).

Where father filed pleadings with the court seeking affirmative relief on the merits of the case concerning custody of children, and accepted counsel, who represented him in all phases of the proceedings, he could not complain that the court did not have personal jurisdiction over him for the subsequent purpose of terminating his parental rights. Arkansas Dep't of Human Servs. v. Farris, 309 Ark. 575, 832 S.W.2d 482 (1992).

### **Exclusive Jurisdiction.**

Where the paternity issued did not arise during the original divorce action, which is what § 9-10-101(a)(2) [repealed] requires for exclusive jurisdiction to reside in chancery court, but arose some years after the divorce was concluded, though the chancery court did retain jurisdiction to modify and enforce the rights of the parties, jurisdiction over the paternity action appropriately lay in chancery court, juvenile division. Hall v. Pulaski County Chancery Court, 320 Ark. 593, 898 S.W.2d 46 (1995).

### **Judgment.**

Judgment of juvenile court must have recited all jurisdictional facts to be free from collateral attack. Jackson v. Roach, 176 Ark. 688, 3 S.W.2d 976 (1928) (decision under prior law).

### **Parties.**

Where children had been temporarily abandoned by their parents, the state was the proper party plaintiff in its public guardianship capacity because an emergency situation involving children existed. Robins v. Arkansas Social Servs., 273 Ark. 241, 617 S.W.2d 857 (1981) (decision under prior law).

### **Transfer.**

A probate court's failure to transfer an adoption case to the juvenile court would constitute reversible error had a party objected or brought it to the court's attention; however, the court was not acting without jurisdiction in hearing the matter. Appellant's failure to request a transfer of

the case or otherwise question the propriety of the probate court hearing the case waived the issue. In re D.J.M., 39 Ark. App. 116, 839 S.W.2d 535 (1992).

The circuit court's in personam jurisdiction of a juvenile, once surrendered pursuant to a valid hearing on the motion to transfer, may not be reconferred upon the transferor court simply by the state's unilateral action of there refileing its charges against that juvenile. Webb v. State, 318 Ark. 581, 886 S.W.2d 624 (1994).

What the prosecutor chooses to charge in the circuit court with respect to a juvenile is not necessarily determinative of the forum for trial; that decision rests with the circuit court. Webb v. State, 318 Ark. 581, 886 S.W.2d 624 (1994).

**Cited:** Robinson v. Sutterfield, 302 Ark. 7, 786 S.W.2d 572 (1990); Juvenile H. v. Crabtree, 310 Ark. 208, 833 S.W.2d 766 (1992); Ark. Dep't of Human Servs. v. Collier, 351 Ark. 506, 95 S.W.3d 772 (2003).

## 9-27-307. Venue.

(a)(1)(A) Except as set forth in subdivisions (a)(2)-(4) of this section, a proceeding under this subchapter shall be commenced in the circuit court of the county in which the juvenile resides.

(B)(i) No dependency-neglect proceeding shall be dismissed if a proceeding is filed in the incorrect county.

(ii) If the proceeding is filed in the incorrect county, then the dependency-neglect proceeding shall be transferred to the proper county upon discovery of the proper county of residence of the juvenile.

(2) Proceedings may be commenced in the county where the alleged act or omission occurred in any of the following:

- (A) Nonsupport after establishment of paternity;
- (B) Delinquency; or
- (C) Dependency-neglect.

(3) Proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., shall be commenced in the court provided by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(4) Adoptions and guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile.

(5) Juvenile proceedings shall comply with § 16-13-210, except detention hearings under § 9-27-326 and probable cause hearings under § 9-27-315.

(b)(1) Following adjudication, the court may on its own motion or on motion of any party transfer the case to the county of the juvenile's residence when the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., do not apply.

(2) The court shall not transfer any case to another judicial district prior to adjudication, excluding matters filed in the incorrect venue, or any case in which a petition to terminate parental rights has been filed unless the court has taken final action on the petition.

(c)(1) Prior to transferring a case to another venue, the court shall contact the judge in the other venue to confirm that the judge in the other venue will accept the transfer.

(2)(A) Upon confirmation that the judge will accept the transfer of venue, the transferring judge shall enter the transfer order. The transfer order shall:

- (i) Indicate that the judge has accepted the transfer;
- (ii) State the location of the court in the new venue; and
- (iii) Set the time and date of the next hearing.

(B) The transfer order shall be:

- (i) Provided to all parties and attorneys to the case; and
- (ii) Transmitted immediately to the judge accepting the transfer.

(3) The transferring court shall also ensure that all court records are copied and sent to the judge in the new venue.

**History.** Acts 1989, No. 273, § 6; 1997, No. 1084, § 1; 2001, No. 1503, § 2; 2003, No. 1319, § 10; 2003, No. 1809, § 1; 2005, No. 1990, § 3; 2007, No. 587, § 10; 2009, No. 956, § 7.

The 2007 amendment added (c).

The 2009 amendment inserted "to another judicial district prior to adjudication, excluding matters filed in the incorrect venue, or any case" in (b)(2).

**Amendments.** The 2005 amendment added (a)(1)(B).

## 9-27-308. Personnel — Duties.

(a) INTAKE OFFICERS.

(1) The judge or judges of the circuit court designated to hear juvenile cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, shall designate no fewer than one (1) person in his or her judicial district as intake officer for the court.

(2)(A) An intake officer shall have the following duties:

(i) To receive and investigate complaints and charges that a juvenile is delinquent or dependent-neglected, or that a family is in need of services;

(ii) To make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desired; and

(iii) To perform all other functions assigned to him or her by this subchapter, by rules promulgated pursuant thereto, or by order of the court.

(B) Any of the foregoing functions may be performed in another state if authorized by a court of this state and permitted by the laws of the other state.

(3) If the intake officer has reasonable cause to suspect that a juvenile has been subjected to child maltreatment as defined in § 12-18-103(6), the intake officer shall immediately notify the central intake of the Department of Human Services.

(b) PROBATION OFFICERS.

(1) The judge or judges of the circuit court designated to hear juvenile cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, shall designate



no fewer than one (1) person in his or her judicial district as probation officer.

(2) A probation officer shall have the following duties:

(A) To make appropriate investigations and reports when required to do so by any provision of this subchapter or the rules promulgated pursuant thereto or by order of the court;

(B) To aid and counsel juveniles and their families when required to do so by order of the court;

(C) To perform all other appropriate functions assigned to him or her by this subchapter or the rules promulgated pursuant thereto or by order of the court; and

(D) To give appropriate aid and assistance to the court when requested to do so by the judge.

**History.** Acts 1989, No. 273, § 7; 1995, No. 533, § 2; 2003, No. 1166, § 5; 2009, No. 758, § 11.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2009 amendment substituted "§ 12-18-103(6)" for "§ 12-12-503(6)" in (a)(3), and made a minor stylistic change.

**Effective Dates.** Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

## CASE NOTES

### ANALYSIS

#### Funding.

Immunity of Intake Officers.

#### Funding.

Where circuit and chancery judge issued an order setting the salaries of the judicial district's probation officer and intake officer at \$18,000.00 per year, and petitioners, members of the county quorum court, voted to pay county's share of the salary, but at the rate of only \$15,000.00 per year, petitioners did not fail to fund the court, there was no showing that level of funding was so low that the court could not effectively operate and the inherent authority doctrine did not apply. *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

#### Immunity of Intake Officers.

All actions taken by a social worker are not entitled to absolute immunity. If a

social worker unilaterally attempts to influence the parent-child relationship, these actions would fall outside the protected prosecutorial role; in such a case, a lawsuit could proceed against the social worker, and the social worker would only be entitled to assert the defense of qualified immunity. *Fogle v. Benton County Scan*, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

Actions of supervisor for Arkansas Social Services in the initiation and investigation of a petition to remove child from person's custody due to a suspicion of child abuse were not outside supervisor's quasi-prosecutorial role as an advocate and were thus protected by absolute prosecutorial immunity, and a contention that supervisor's actions were motivated by malicious intent did not remove the protection afforded by absolute prosecutorial immunity. *Fogle v. Benton County Scan*, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

**9-27-309. Confidentiality of records.**

(a) All records may be closed and confidential within the discretion of the circuit court, except:

(1) Adoption records, including any part of a dependency-neglect record that includes adoption records, shall be closed and confidential as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(2) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult or to determine if the juvenile should be tried as an adult; and

(3) Records of delinquency adjudications for a juvenile adjudicated delinquent for any felony or a Class A misdemeanor wherein violence or a weapon was involved shall be made available to the Arkansas Crime Information Center.

(b)(1)(A) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding of guilt as an adult.

(B) Thereafter they may be expunged.

(2) The court may expunge other juvenile records at any time and shall expunge all the records of a juvenile upon his or her twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.

(3) For purposes of this section, "expunge" means to destroy.

(c) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult or until the juvenile's twenty-first birthday, whichever is longer.

(d)(1) If an adult criminal sentence is imposed on an extended juvenile jurisdiction offender, the record of that case shall be considered an adult criminal record.

(2)(A) The court shall enter an order transferring the juvenile record to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal docket number and shall maintain the file as if the case had originated as a criminal case.

(e) This section does not apply to nor restrict the use or publication of statistics, data, or other materials that summarize or refer to any records, reports, statements, notes, or other information in the aggregate and that do not refer to or disclose the identity of any juvenile defendant in any proceeding when used only for the purpose of research and study.

(f) This subchapter does not preclude prosecuting attorneys or the court from providing information, upon written request, concerning the disposition of juveniles who have been adjudicated delinquent to:

(1) The victim or his or her next of kin; or

(2) The school superintendent of the school district in which the juvenile is currently enrolled.

(g) When a juvenile is adjudicated delinquent for an offense for which he or she could have been charged as an adult or for unlawful possession of a handgun, § 5-73-119, the prosecuting attorney shall notify the school superintendent of the school district in which the juvenile is currently enrolled.

(h) Information provided pursuant to subsections (f) and (g) of this section shall not be released in violation of any state or federal law protecting the privacy of the juvenile.

(i)(1) If a juvenile is arrested for unlawful possession of a firearm under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or battery in the first degree under § 5-13-201, the arresting agency shall as soon as practical and with all reasonable haste cause written notification of the arrest to be given to the superintendent of the school district in which the juvenile is currently enrolled.

(2)(A) The superintendent shall then notify the principal and the resource officer of the school in which the juvenile is currently enrolled.

(B) The arrest information shall be treated as confidential information and shall not be disclosed by the superintendent to any person other than the principal and resource officer, who shall also maintain the information as confidential.

(3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the juvenile or to ensure school safety.

(j) Records of the arrest of a juvenile, the detention of a juvenile, and the proceedings under this subchapter shall be confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:

(1) Authorized by a written order of the juvenile division of circuit court; or

(2) The arrest or the proceedings under this subchapter result in the juvenile's being formally charged in the criminal division of circuit court for a felony.

(k) Information regarding the arrest or detention of a juvenile and related proceedings under this subchapter shall be confidential unless the exchange of information is:

(1) For the purpose of obtaining services for the juvenile or to ensure public safety;

(2) Reasonably necessary to achieve one (1) or both purposes; and

(3) Under a written order by the circuit court.

(l)(1) The information may be given only to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

(C) A law enforcement officer;

(D) A spiritual representative designated by the juvenile or his or her parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;



(G) A Department of Health representative; or

(H) The juvenile's attorney ad litem or other court-appointed special advocate.

(2) The persons listed in subdivision (1)(1) of this section may meet to exchange information, to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, and to ensure public safety.

(3) The juvenile and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (1)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records, and related information shall remain confidential unless the juvenile's parent or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (1)(1) of this section and the purpose for the disclosure.

(5) Persons listed in subdivision (1)(1) of this section who exchange any information referred to in this section may be held civilly liable for disclosure of the information if the person does not comply with limitations set forth in this section.

(m)(1) When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to student safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student safety be provided to the school superintendent and principal where the juvenile is enrolled.

(2) When a court order amends or removes any safety plan outlined in subdivision (m)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan, as it relates to student safety, be provided to the school superintendent and principal where the juvenile is enrolled.

(3) The superintendent or principal shall provide verbal notification only to school officials who are necessary to implement the safety plan as ordered by the court to ensure student safety. This verbal notification may only be provided to assistant principals, counselors, and the school employee who is primarily responsible for the juvenile learning environment where the juvenile is currently enrolled, and bus drivers if applicable.

(4) Any school officials that receive a court order and safety plan or information concerning the court order and safety plan shall:

(A) Keep the information confidential and shall sign a statement not to disclose the information concerning the court order and safety plan that shall be kept by the superintendent or principal along with the court order and safety plan;

(B) Keep the information confidential and shall not disclose the information to any person not listed in subdivision (1)(1) of this section;

(C) Include the information in the juvenile's permanent educational records; and

(D)(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(ii) A school official shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C.\*§ 1232g.

(iii) However, the local education agency shall not under any circumstance release, disclose, or make available for inspection to the public, any college, university, institution of higher learning, vocational or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record.

(5) When a student attains an age that he or she is no longer under the jurisdiction of the juvenile division of circuit court, the safety plan and the order regarding the safety plan shall be removed from the juvenile's permanent records at the local education agency and destroyed.

**History.** Acts 1989, No. 273, § 8; 1993, No. 535, § 3; 1993, No. 551, § 3; 1993, No. 758, § 4; 1994 (2nd Ex. Sess.), No. 69, § 1; 1994 (2nd Ex. Sess.), No. 70, § 1; 1999, No. 1192, § 13; 1999, No. 1451, § 1; 2001, No. 1268, § 1; 2003, No. 1166, § 6; 2009, No. 956, § 8.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subsection (a) of this section is set out above as amended by Acts 1993, No. 758. Subsection (a) of this section was also amended by identical acts Nos. 535 and 551, § 3, to read as follows: "All records

may be closed and confidential within the discretion of the court except records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult."

**Amendments.** The 2009 amendment inserted "including any part of a dependency-neglect record that includes adoption records" in (a)(1); added (j) through (m); and made related and minor stylistic changes.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

## CASE NOTES

### ANALYSIS

**Applicability.**  
State Access.

### Applicability.

Where the appellant was adjudicated delinquent of an offense for which he could have been charged as an adult, the specific expungement provisions contained in this section controlled over the more general

provisions for expungement of criminal records found in § 16-90-901 and the statutes enumerated therein. *L.H. v. State*, 333 Ark. 613, 973 S.W.2d 477 (1998).

### State Access.

Items were not inadmissible simply because they came from defendant's juvenile court file; subsection (a) of this section gives the juvenile court discretion to open files for the State. *Echols v. State*, 326 Ark.

917, 936 S.W.2d 509 (1996), cert. denied, **Cited:** *Juvenile H. v. Crabtree*, 310 Echols v. Arkansas, 520 U.S. 1244, 117 S. Ark. 212, 833 S.W.2d 766 (1992). Ct. 1853, 137 L. Ed. 2d 1055 (1997).

### **9-27-310. Commencement of proceedings.**

(a) Proceedings shall be commenced by filing a petition with the circuit clerk of the circuit court or by transfer by another court.

(b)(1) The prosecuting attorney shall have sole authority to file a delinquency petition or petition for revocation of probation.

(2) Only a law enforcement officer, prosecuting attorney, or the Department of Human Services or its designee may file a dependency-neglect petition seeking ex parte emergency relief.

(3) Petitions for dependency-neglect or family in need of services may be filed by:

(A) Any adult; or

(B) Any member ten (10) years of age or older of the immediate family alleged to be in need of services.

(4) Petitions for paternity establishment may be filed by:

(A) The biological mother;

(B) A putative father;

(C) A juvenile; or

(D) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(c) Concurrent with filing, a copy of any petition that requests that the Department of Human Services take custody or provide family services shall be mailed to the Director of the Department of Human Services and to the attorney of the local Office of Chief Counsel of the Department of Human Services by the petitioner.

(d)(1) A person may submit to the intake officer for investigation a complaint of acts or omissions that if substantiated would constitute delinquency.

(2) Upon substantiation, the intake officer may refer the matter to the prosecuting attorney or an appropriate agency.

(e) No fees, including, but not limited to, fees for filings, copying, or faxing, including petitions for adoption, petitions for guardianships, summons, or subpoenas shall be charged or collected by the circuit clerk or sheriff's office in cases brought in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services.

(f) If the circuit clerk's office has a fax machine, the circuit clerk, in cases commenced in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services shall accept facsimile transmissions of any papers filed under this subchapter as described in Rule 5 of the Arkansas Rules of Civil Procedure.



**History.** Acts 1989, No. 273, § 9; 1989 (3rd Ex. Sess.), No. 34, § 1; 1995, No. 533, § 3; 1995, No. 1184, § 18; 1999, No. 1340, §§ 8, 9; 2001, No. 1503, § 3; 2003, No. 1166, § 7; 2005, No. 1990, § 4.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subsection (b) of this section is set out above as amended by Acts 1995, No. 1184, § 18. Subsection (b) of this section was also amended by Acts 1995, No. 533, § 3 to read as follows:

“(b)(1) The prosecuting attorney shall have sole authority to file a delinquency petition or petition for revocation of probation.

“(2) Only a law enforcement officer, prosecuting attorney, the Department of Human Services or its designee may file a dependency-neglect petition seeking ex parte emergency relief.

“(3) Petitions for dependency-neglect or family in need of services may be filed by:

“(A) Any adult; or

“(B) Any member ten (10) years or older of the immediate family alleged to be in need of services.

“(4) Petitions for paternity establishment may be filed by:

“(A) The biological mother;

“(B) A putative father;

“(C) A juvenile; or

“(D) The Department of Human Services or the Office of Child Support Enforcement (OCSE).”

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes “all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts....”

**Amendments.** The 2005 amendment added (f); and, in (e), inserted “copying, or faxing” and “or sheriff’s office.”

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Note, Civil Procedure — Arkansas Rule of Civil Procedure 53(b) — An End to the Use of

Special Referees in Arkansas, 12 U. Ark. Little Rock L.J. 577.

## CASE NOTES

### ANALYSIS

Construction.

Discretion of Prosecutor.

Jurisdiction.

### Construction.

The statutes of the juvenile court clearly support the conclusion that a direct transfer of a case is effected by a transfer order; the transfer of the case, viewed from the perspective of the transferor court, in the language of § 9-27-318(b)(2) (“transfer the case to juvenile court”) (now see § 9-27-318(d)), is mirrored in the language of subsection (a) of this section, which provides, from the perspective of the transferee court, that proceedings in juvenile court “shall be commenced by filing a petition with the clerk of the chancery court or by transfer by another court.” *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

### Discretion of Prosecutor.

This subchapter provides that, when a case involves a juvenile 16 years of age or older, and the alleged act would constitute a felony if committed by an adult, the prosecuting attorney has the discretion to file a petition in juvenile court alleging delinquency, or to file charges in circuit court and to prosecute as an adult. *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994).

### Jurisdiction.

Trial court, not the juvenile court, had jurisdiction and the mere detention of defendant in a juvenile facility did not give the juvenile court jurisdiction; because no juvenile proceedings had commenced against defendant, the trial court acquired jurisdiction over the criminal proceedings initiated against him upon the filing of the information charging him as an adult. *Morgan v. Norris*, 355 Ark. 678, 144 S.W.3d 243 (2004).

**Cited:** Arkansas Dep't of Human Servs. v. Farris, 309 Ark. 575, 832 S.W.2d 482 (1992); Troutt Bros. v. Emison, 311 Ark. 27, 841 S.W.2d 604 (1992); Lowell v. Lowell, 55 Ark. App. 211, 934 S.W.2d 540 (1996).

### 9-27-311. Required contents of petition.

(a) The petition shall set forth the following:

(1)(A) The name, address, gender, social security number, and date of birth of each juvenile subject of the petition.

(B) A single petition for dependency-neglect or family in need of services shall be filed that includes all siblings who are subjects of the petition;

(2) The name and address of each of the parents or the surviving parent of the juvenile or juveniles;

(3) The name and address of the person, agency, or institution having custody of the juvenile or juveniles;

(4) The name and address of any other person, agency, or institution having a claim to custody or guardianship of the juvenile or juveniles;

(5) In a proceeding to establish paternity, the name and address of both the putative father and the presumed legal father, if any; and

(6) In a dependency-neglect proceeding, the name and address of a putative parent, if any.

(b) If the name or address of anyone listed in subsection (a) of this section is unknown or cannot be ascertained by the petitioner with reasonable diligence, this shall be alleged in the petition and the petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to the persons.

(c) All persons named in subdivisions (a)(1)-(3) of this section and subdivision (a)(6) of this section shall be made defendants and served as required by this subchapter, except that all actions filed pursuant to § 9-27-310(b)(4)(D) shall be required to name as defendants only the mother, the putative father, and the presumed legal father, if any.

(d)(1) The petition shall set forth the following in plain and concise words:

(A) The facts that, if proven, would bring the family or juvenile within the court's jurisdiction;

(B) The section of this subchapter upon which jurisdiction for the petition is based;

(C) The relief requested by the petitioner; and

(D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

(2)(A) The petition shall be supported by an affidavit of facts.

(B) A supporting affidavit of facts shall not be required for delinquency, paternity, or termination of parental rights petitions.

**History.** Acts 1989, No. 273, § 10; 1989 Ark. Sess. 1st Ex. Sess., No. 34, § 2; 1995, No. 1184, § 19; 1997, No. 1085, § 1; 1997, No. 1227, § 2; 1999, No. 1340, §§ 10, 11.

## CASE NOTES

## ANALYSIS

In General.

Defendants.

Discharge from Hospital.

**In General.**

No less than 72 hours prior to an adjudicatory hearing, the juvenile and his parents or guardian were to be personally served with a written copy of a petition or other notice which included the following information in addition to that which was required by former statute: (1) whether the child is being charged as a delinquent, a juvenile in need of supervision, or as a dependent-neglected child; (2) if a child is charged with delinquency by virtue of having violated a criminal statute, the date and place the alleged acts constituting delinquency occurred, as well as a description of the alleged acts and the names of all persons allegedly involved; (3) the names and addresses of all known witnesses to the alleged acts constituting delinquency; and (4) that the child has the right to compel the attendance of witnesses at the hearing through subpoena. *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979) (decision under prior law).

**9-27-312. Notification to defendants.**

All juvenile defendants ten (10) years of age and above, any persons having care and control of the juveniles, and all adult defendants shall be served with a copy of the petition and either a notice of hearing or order to appear in the manner provided by the Arkansas Rules of Civil Procedure.

**History.** Acts 1989, No. 273, § 11.

## CASE NOTES

**Noncompliance.**

Where the Arkansas Department of Human Services did not make appellant a party to the dependency proceeding for two years despite knowing his putative fatherhood and terminated his parental rights without creating a case plan for him or providing family services, the dic-

**Defendants.**

The putative father of the children at issue was a defendant and, therefore, had standing to contest the dependency/neglect proceeding, notwithstanding that he was not a legal custodian or a legal guardian of the children. *Jorden v. Arkansas Dep't of Human Servs.*, 73 Ark. App. 1, 38 S.W.3d 914 (2001).

Where the Arkansas Department of Human Services did not make appellant a party to the dependency proceeding for two years despite knowing his putative fatherhood and terminated his parental rights without creating a case plan for him or providing family services, the dictates of this section and § 9-27-312 were not met and he was denied basic due process guarantees. *Tuck v. Ark. Dep't of Human Servs.*, 103 Ark. App. 263, 288 S.W.3d 665 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 911 (Nov. 12, 2008), review denied, 375 Ark. 177, — S.W.3d — (2008).

**Discharge from Hospital.**

Discharge of infant from hospital did not violate any affirmative duty under former statute. *Harpole v. Arkansas Dep't of Human Servs.*, 820 F.2d 923 (8th Cir. 1987) (decision under prior law).

tates of § 9-27-311 and this section were not met and he was denied basic due process guarantees. *Tuck v. Ark. Dep't of Human Servs.*, 103 Ark. App. 263, 288 S.W.3d 665 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 911 (Nov. 12, 2008), review denied, 375 Ark. 177, — S.W.3d — (2008).



**9-27-313. Taking into custody.**

(a)(1) A juvenile only may be taken into custody without a warrant before service upon him or her of a petition and notice of hearing or order to appear as set out under § 9-27-312:

(A) Pursuant to an order of the circuit court under this subchapter;

(B) By a law enforcement officer without a warrant under circumstances as set forth in rule 4.1 of the Arkansas Rules of Criminal Procedure; or

(C) By a law enforcement officer or by a duly authorized representative of the Department of Human Services if there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his or her surroundings or from illness or injury and if parents, guardians, or others with authority to act are unavailable or have not taken action necessary to protect the juvenile from the danger and there is not time to petition for and to obtain an order of the court before taking the juvenile into custody.

(2) When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(b)(1) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(2) The judge shall decide whether the juvenile should be tried as a delinquent or a criminal defendant pursuant to § 9-27-318.

(c) When a law enforcement officer, a representative of the department, or other authorized person takes custody of a juvenile alleged to be dependent-neglected or under the Child Maltreatment Act, § 12-18-101 et seq., he or she shall:

(1)(A) Notify the department and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(B) The notification to the parents shall be in writing and shall include a notice:

(i) That the juvenile has been taken into foster care;

(ii) Of the name, location, and phone number of the person at the department whom they can contact about the juvenile;

(iii) Of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter;

(iv) Of the location and telephone number of the court; and

(v) Of the procedure for obtaining a hearing; or

(2) Return the juvenile to his or her home.

(d)(1)(A) A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian, or custodian of the juvenile's location, and notify the juvenile

intake officer within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody for:

- (i) Unlawful possession of a handgun, § 5-73-119(a)(1);
- (ii) Possession of a handgun on school property, § 5-73-119(b)(1);
- (iii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (iv) Any felony committed while armed with a firearm; or
- (v) Criminal use of prohibited weapons, § 5-73-104.

(B) The authority of a juvenile intake officer to make a detention decision pursuant to § 9-27-322 shall not apply when a juvenile is detained pursuant to subdivision (d)(1)(A) of this section.

(C) A detention hearing shall be held by the court pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day.

(2) If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision (d)(1)(A) of this section, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A)(i) Take the juvenile to detention.

(ii) The intake officer shall be notified immediately to make a detention decision pursuant to § 9-27-322 within twenty-four (24) hours of the time the juvenile was first taken into custody, and the prosecuting attorney shall be notified within twenty-four (24) hours.

(iii) If the juvenile remains in detention, a detention hearing shall be held no later than seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the court and release the juvenile and within twenty-four (24) hours notify the juvenile intake officer and the prosecuting attorney so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(3) If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A) Notify the juvenile intake officer, who shall make a detention decision pursuant to § 9-27-322;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the circuit court and release the juvenile and notify the juvenile intake officer and the prosecuting attorney within twenty-four (24) hours so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(4)(A) In all instances when a juvenile may be detained, the juvenile may be held in a juvenile detention facility or a seventy-two-hour holdover if a bed is available in the facility or holdover.

(B) If not, an adult jail or lock-up may be used, as provided by § 9-27-336.

(5) In all instances when a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian.

(e) When a law enforcement officer takes custody of a juvenile under this subchapter for reasons other than those specified in subsection (c) of this section concerning dependent-neglected juveniles or subsection (d) of this section concerning delinquency, he or she shall:

(1)(A)(i) Take the juvenile to shelter care, notify the department and the intake officer of the court, and immediately make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(ii) The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter, of the location and telephone number of the court, and of the procedure for obtaining a hearing.

(B)(i) In cases when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or lives out of state and the juvenile has been absent from his or her home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(iii) A juvenile held under this subdivision (e)(1)(B) must be separated from detained juveniles charged or held for delinquency.

(iv) A juvenile may not be held under this subdivision (e)(1)(B) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; or

(2) Return the juvenile to his or her home.

(f) If no delinquency petition to adjudicate a juvenile taken into custody is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours after an alleged delinquent juvenile is taken into custody, whichever is sooner, the alleged delinquent juvenile shall be discharged from custody, detention, or shelter care.

**History.** Acts 1989, No. 273, § 12; § 8; 2005, No. 1990, § 5; 2009, No. 758, 1993, No. 882, § 1; 1994 (2nd Ex. Sess.), § 12.  
No. 55, § 2; 1994 (2nd Ex. Sess.), No. 56, § 2; 1999, No. 1340, § 12; 2001, No. 1582, § 1; 2001, No. 1610, § 2; 2003, No. 1166,

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery



courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2005 amendment, in (f), inserted "delinquency", "an alleged delinquent" and "alleged delinquent".

The 2009 amendment substituted "under the Child Maltreatment Act, § 12-18-

101 et seq." for "pursuant to the Arkansas Child Maltreatment Act, § 12-12-501 et seq." in the introductory language of (c).

**Effective Dates.** Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

## CASE NOTES

### ANALYSIS

Constitutionality.

Construction.

Applicability.

Detention.

Discretion of Prosecutor.

Jurisdiction.

Noncompliance.

### Constitutionality.

Election of officers to take children to city jail rather than to juvenile court was not a violation of any federally guaranteed right. *Pritchard v. Downie*, 326 F.2d 323 (8th Cir. 1964) (decision under prior law).

### Construction.

Former statutes, governing charging of juveniles, could readily be harmonized, and meant that a person who was 15, 16, or 17 at the time of the offense could be charged in the circuit court, municipal court, or juvenile court. *State v. Banks*, 271 Ark. 331, 609 S.W.2d 10 (1980) (decision under prior law).

The word "shall," relating to the duties of the judge, requires mandatory compliance. *Baumer v. State*, 300 Ark. 160, 777 S.W.2d 847 (1989) (decision under prior law).

### Applicability.

Where juvenile had been arrested on a circuit court felony bench warrant, but neither the abstract nor transcript shows a copy of an indictment or information setting out the felony offenses with which the juvenile was charged, the juvenile had not been charged with a felony in circuit court as an adult when the law officers interrogated him and gained his confession; thus, the Juvenile Code was appli-

cable at the time juvenile gave his statement, and his statement was therefore inadmissible at trial because the law enforcement officer's conduct failed to comport with required Juvenile Code procedures when they obtained juvenile's confession. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994), rehearing denied, 315 Ark. 658, 875 S.W.2d 814 (1994).

### Detention.

Minor children suing police chief for denial of their federal rights, alleging that arresting officers violated former statute which provided for separation of juvenile and adult convicts did not have their rights denied, as none of the plaintiffs were committed by a court or magistrate. *Pritchard v. Downie*, 326 F.2d 323 (8th Cir. 1964) (decision under prior law).

Although father did appeal his son being taken into emergency custody after the father was arrested, the trial court erred in adjudicating the child dependent under § 9-27-303(17) and (36) as there were two family members who testified at the adjudication hearing that they were willing to take care of the child. *Moiser v. Ark. Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

### Discretion of Prosecutor.

Former statute granted a prosecuting attorney discretion in which court he would charge certain juveniles, and this authority given to a prosecuting attorney coincided with the provision that permitted certain juveniles to be tried in circuit court or municipal court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

**Jurisdiction.**

Former statute, when construed with the rest of the Arkansas Juvenile Code, did not require that all juveniles under eighteen years of age be charged and tried for criminal acts in juvenile court; a prosecuting attorney had discretion to charge juveniles over fifteen years of age in juvenile, municipal, or circuit court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

**Noncompliance.**

A violation of requirement that juvenile be taken immediately before the court

after arrest did not require dismissal of the charges. *State v. Banks*, 271 Ark. 331, 609 S.W.2d 10 (1980) (decision under prior law).

**Cited:** *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994); *Whitehead v. State*, 316 Ark. 563, 873 S.W.2d 800 (1994); *K.W. v. State*, 327 Ark. 205, 937 S.W.2d 658 (1997); *Ark. Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002); *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

**9-27-314. Emergency orders.**

(a)(1) In any case in which there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile's removal from the state, the circuit court shall issue an ex parte order for emergency custody to remove the juvenile from the custody of the parent, guardian, or custodian and shall determine the appropriate plan for placement of the juvenile.

(2) In any case in which there is probable cause to believe that an emergency order is necessary to protect the juvenile from severe maltreatment, as defined in § 12-18-103(17), the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile if the alleged offender:

(A) Has a legal right to custody or visitation with the juvenile;

(B) Has a property right allowing access to the home where the juvenile resides; or

(C) Is a juvenile.

(3) In any case in which there is probable cause to believe that a juvenile is a dependent juvenile as defined in this subchapter, the court shall issue an ex parte order for emergency custody placing custody of the dependent juvenile with the Department of Human Services.

(b) The emergency order shall include:

(1) Notice to the juvenile's parents, custodian, or guardian of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order;

(2) Their right to be represented by counsel;

(3) Their right to obtain appointed counsel, if indigent, and the procedure for obtaining appointed counsel; and

(4) The location and telephone number of the court and the procedure for obtaining a hearing.

(c)(1) Immediate notice of the emergency order shall be given by the petitioner or by the court to the parents, guardians, or custodian and the juvenile.

(2) All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

**History.** Acts 1989, No. 273, § 13; 1995, No. 533, § 4; 1999, No. 1340, § 32; 2005, No. 1990, § 6; 2007, No. 587, § 11; 2009, No. 758, § 13.

**A.C.R.C. Notes.** The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2005 amendment added (a)(3); substituted “in which” for “where” in (a)(1) and (a)(2); and added “to provide specific ... where the juvenile resides” in (a)(2).

The 2007 amendment added (a)(2)(C) and made related changes.

The 2009 amendment substituted “§ 12-18-103(17)” for “§ 12-12-503(16)” in the introductory language of (a)(2).

**Effective Dates.** Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.”

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Landreneau, Evidence — Former Testimony Exception to the Hearsay Rule Poses Unexpected Hazards to Parents Who Testify in Juve-

nile Court Probable Cause Hearings. Hamblen v. State, 44 Ark. App. 54, 866 S.W.2d 119 (1993), 18 U. Ark. Little Rock L.J. 181.

## CASE NOTES

### ANALYSIS

Discharge from Hospital.  
Immunity of Social Workers.  
Jurisdiction.  
Parties.  
Proof.

### Discharge from Hospital.

Discharge of infant from hospital did not violate any affirmative duty under former statute. Harpole v. Arkansas Dep't of Human Servs., 820 F.2d 923 (8th Cir. 1987) (decision under prior law).

### Immunity of Social Workers.

All actions taken by a social worker are not entitled to absolute immunity. If a social worker unilaterally attempts to influence the parent-child relationship, these actions would fall outside the protected prosecutorial role; in such a case, a lawsuit could proceed against the social worker, and the social worker would only be entitled to assert the defense of qualified immunity. Fogle v. Benton County Scan, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

Actions of supervisor for Arkansas Social Services in the initiation and investigation of a petition to remove child from person's custody due to a suspicion of child abuse were not outside supervisor's quasi-prosecutorial role as an advocate and were

thus protected by absolute prosecutorial immunity, and a contention that supervisor's actions were motivated by malicious intent did not remove the protection afforded by absolute prosecutorial immunity. Fogle v. Benton County Scan, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

### Jurisdiction.

Juvenile court was proper court with jurisdiction to determine whether children should be placed in the temporary care of the state; the juvenile court properly refused to allow the parents to contest permanent custody of the children at the same proceeding since only the chancery courts have jurisdiction to hear custody cases between private litigants. Robins v. Arkansas Social Servs., 273 Ark. 241, 617 S.W.2d 857 (1981) (decision under prior law).

### Parties.

Where children had been abandoned by parents, the state was the proper party plaintiff in its public guardianship capacity. Robins v. Arkansas Social Servs., 273 Ark. 241, 617 S.W.2d 857 (1981) (decision under prior law).

### Proof.

Where the state, in its capacity as public guardian of infants, is seeking an order



to temporarily care for neglected or dependent children, the preponderance of the evidence standard is proper. *Robins v. Arkansas Social Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981) (decision under prior law).

**Cited:** *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994); *Dover v. Arkansas Dep't of Human Servs.*, 62 Ark. App. 37, 968 S.W.2d 635 (1998).

### **9-27-315. Probable cause hearing.**

(a)(1)(A) Following the issuance of an emergency order, the circuit court shall hold a probable cause hearing within five (5) business days of the issuance of the ex parte order to determine if probable cause to issue the emergency order continues to exist.

(B)(i) The hearing shall be limited to the purpose of determining whether probable cause existed to protect the juvenile and to determine whether probable cause still exists to protect the juvenile.

(ii) However, the issues as to custody and delivery of services may be considered by the court and appropriate orders for that entered by the court.

(2)(A) All other issues, with the exception of custody and services, shall be reserved for hearing by the court at the adjudication hearing, which shall be a separate hearing conducted subsequent to the probable cause hearing.

(B) By agreement of the parties and with the court's approval, the adjudication hearing may be conducted at any time after the probable cause hearing, subject to § 9-27-327(a)(2).

(b) The petitioner shall have the burden of proof by a preponderance of evidence that probable cause exists for continuation of the emergency order.

(c) If the court determines that the juvenile can safely be returned to his or her home pending adjudication and it is in the best interest of the juvenile, the court shall so order.

(d)(1) At the probable cause hearing, the court shall set the time and date of the adjudication hearing.

(2) If the juvenile has already been adjudicated a dependent juvenile or a dependent-neglected juvenile in the same case in which the motion for change of custody has been filed and the case has not been dismissed or closed, a subsequent adjudication shall not be necessary if the ground for the removal is the same type as the ground already adjudicated.

(3) A written order shall be filed by the court or by a party or party's attorney, as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(e) All probable cause hearings are miscellaneous proceedings as defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules of evidence, including, but not limited to, the hearsay rule, Rule 802 of the Arkansas Rules of Evidence, are not applicable.

**History.** Acts 1989, No. 273, § 14; 1993, No. 1227, § 3; 1995, No. 533, § 5; 1995, No. 1337, § 2; 1997, No. 1227, § 3; 1999, No. 1340, § 33; 2003, No. 1319, § 11; 2005, No. 1990, § 7.

**Amendments.** The 2005 amendment inserted (d)(2); redesignated former (d)(2) as present (d)(3).

## CASE NOTES

### ANALYSIS

In General.  
Adjudication Hearing.  
Proof.

#### **In General.**

Orders based upon emergency hearings pursuant to this section are not final, appealable orders. *Dover v. Arkansas Dep't of Human Servs.*, 62 Ark. App. 37, 968 S.W.2d 635 (1998).

#### **Adjudication Hearing.**

While an adjudication hearing is generally necessary in a dependency-neglect case in order for the circuit court to consider and determine all of the issues involved, this section does not require the circuit court to hold such a hearing; therefore, in a case where a child from Oklahoma was left unattended in a car in Arkansas by his mother, a trial court did

not err by placing the child with his paternal grandparents in Oklahoma at a probable cause hearing since there were no additional issues to consider. Moreover, the trial court was permitted to grant permanent custody at a probable cause hearing under subdivision (a)(1)(B) of this section. *Arkansas HHS v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

#### **Proof.**

Where the state, in its capacity as public guardian of infants, is seeking an order to temporarily care for neglected or dependent children, the preponderance of the evidence standard is proper. *Robins v. Arkansas Social Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981) (decision under prior law).

**Cited:** *Arkansas Dep't of Human Servs. v. Dearman*, 40 Ark. App. 63, 842 S.W.2d 449 (1992).

## 9-27-316. Right to counsel.

(a)(1) In delinquency and family in need of services cases, a juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance before the circuit court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

(2) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b)(1)(A) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and the financial resources of his or her family.

(B) However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

(2) After review by the court of an affidavit of financial means completed and verified by the parent of the juvenile and a determination by the court that the parent or juvenile has the ability to pay, the court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile.

(3) All moneys collected by the circuit clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "juvenile representation fund".

(4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family in need of services cases and indigent parents or guardians in dependency-neglect cases as provided by subsection (h) of this section.

(5) Any money remaining in the fund at the end of the fiscal year shall not revert to any other fund but shall carry over into the next fiscal year in the juvenile representation fund.

(c) If counsel is not retained for the juvenile or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court unless the right to counsel is waived in writing as set forth in § 9-27-317.

(d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile's commitment to an institution in which the freedom of the juvenile would be curtailed and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile.

(e) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(f)(1) The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier.

(2) The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem.

(3) Each attorney ad litem shall:

(A) File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;

(B) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and

(C) Present witnesses and exhibits when necessary to protect the juvenile's best interest.

(4) An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and records of the Department of Human Services to the extent permitted by federal law.

(5)(A) An attorney ad litem shall represent the best interest of the juvenile.

(B) If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall



communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest.

(g)(1) The court may appoint a volunteer court-appointed special advocate from a program that shall meet all state and national court-appointed special advocate standards to advocate for the best interest of juveniles in dependency-neglect proceedings.

(2) No court-appointed special advocate shall be assigned a case before:

(A) Completing a training program in compliance with National Court Appointed Special Advocate Association and state standards; and

(B) Being approved by the local court-appointed special advocate program, which will include appropriate criminal background and child abuse registry checks.

(3) Each court-appointed special advocate shall:

(A)(i) Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports.

(ii) The court-appointed special advocate may testify if called as a witness.

(iii) When the court-appointed special advocate prepares a written report for the court, the advocate shall provide all parties or the attorney of record with a copy of the written report seven (7) business days before the relevant hearing; and

(B) Monitor the case to which he or she is assigned to ensure compliance with the court's orders.

(4) Upon presentation of an order of appointment, a court-appointed special advocate shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records to the extent permitted by federal law.

(5) A court-appointed special advocate is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses.

(6) A court-appointed special advocate shall not be liable for damages for personal injury or property damage pursuant to the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

(7) Except as provided in this subsection, a court-appointed special advocate shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law.

(h)(1)(A) In all proceedings to remove custody from a parent or guardian or to terminate parental rights, the parent or guardian shall be advised in the dependency-neglect petition or the ex parte emergency order and the first appearance before the court of the right to be represented by counsel at all stages of the court proceedings and the right to appointed counsel if indigent.

(B) A court may appoint counsel for the parent or guardian from whom custody was removed in the ex parte emergency order.

(2)(A) Upon request by a parent or guardian from whom custody was removed and a determination by the court of indigence, the court shall appoint counsel for the parent or guardian from whom custody was removed in all circuit court proceedings to remove custody or terminate parental rights of a juvenile.

(B) If the court terminates parental rights, the court shall redetermine if the parent or guardian is indigent and entitled to appointed counsel on appeal only upon request by the parent or guardian and after a hearing to receive evidence, including a new affidavit of indigence.

(C) No payment of attorney's fees for a court proceeding for indigent parents or guardians shall be authorized unless an affidavit of indigence is completed and filed with the clerk of the court.

(D) No payment of attorney's fees for appeals for indigent parents or guardians shall be authorized unless a new affidavit of indigence is completed and filed with the clerk of the court and a redetermination of indigence hearing is held.

(3)(A) After review by the court of an affidavit of financial means completed and verified by the parent or guardian and a determination by the court of an ability to pay, the court shall order financially able parents or guardians to pay all or a part of reasonable attorney's fees and expenses for court-appointed representation of the parent or guardian.

(B)(i) All moneys collected by the clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the juvenile representation fund.

(ii) The court may direct that money from this fund be used in providing counsel for indigent parents or guardians at the trial level in dependency-neglect proceedings.

(iii) Upon a determination of indigency and a finding by the court that the juvenile representation fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for counsel.

(4)(A) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(B) When the first appearance before the court is an emergency hearing to remove custody pursuant to § 9-27-315, parents shall be notified of the right to appointed counsel if indigent in the emergency ex parte order.

(5) The parent's or guardian's attorney shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records to which the parent or guardian is entitled under state and federal law.

**History.** Acts 1989, No. 273, § 15; 1997, No. 1227, § 4; 1999, No. 1192, § 14; 1999, No. 1340, § 13; 2001, No. 987, § 2; 2001, No. 1503, § 4; 2003, No. 1166, § 9; 2003, No. 1809, § 2; 2005, No. 1990, § 8.

**Amendments.** The 2005 amendment

added (h)(1)(B); inserted "circuit court" in present (h)(1)(A); and, in present (h)(2)(A), inserted "from whom custody was removed" twice and "circuit court"; added (h)(2)(B)-(D).

## RESEARCH REFERENCES

**Ark. L. Rev.** Recent Developments, Domestic Relations — Termination of Parental Rights, 57 Ark. L. Rev. 1015.

Note, What About the Child?: A Critique of Linker-Flores v. Arkansas Department of Human Services, 60 Ark. L. Rev. 353.

## CASE NOTES

### ANALYSIS

Attorney's Fees.  
Disqualification.  
Right to Counsel.  
Termination of Parental Rights.

#### Attorney's Fees.

In the absence of any precedent for an allowance of fees under this section to be made directly by the appellate court, a petition for attorney's fees, including representation on appeal is remanded for the trial court to determine the petitioner's entitlement to attorney's fees from the Juvenile Court Representation Fund pursuant to this section. *Cochran v. Arkansas Dep't of Human Servs.*, 44 Ark. App. 105, 865 S.W.2d 651 (1993).

Petition directly to appellate court for fees as provided by this section, made by attorney who represented client at trial and on appeal, remanded to trial court for determination. *Evans v. Arkansas Dep't of Human Servs.*, 48 Ark. App. 157, 892 S.W.2d 525 (1995).

The principles that require payment of attorney's fees for representing an indigent criminal defendant are applicable to termination cases as well, because it would be unconstitutional to appoint counsel and then deny that counsel reasonable payment for services rendered. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

The court erred when it ordered payment of attorney's fees from the Juvenile Court Representation Fund in a proceeding for the termination of parental rights as that fund is not designated for payment of attorney's fees in such cases. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 409, 16 S.W.3d 530 (2000).

Parent's attorney was entitled to a reasonable attorney's fee and costs for work provided in trial court proceedings to terminate parental rights; however, the attorney had to submit her request to the Arkansas State Claims Commission for payment because the legislature had failed to designate a source for payment and the Juvenile Court Representation Fund was not available for payment of appointed attorneys' fees and costs for work performed on appeal. *Walters v. Ark. Dep't of Human Servs.*, 83 Ark. App. 85, 118 S.W.3d 134 (2003).

#### Disqualification.

Trial court's decision to deny a motion to disqualify an attorney ad litem in a family-in-need-of-services case was upheld on review because there was no evidence that the attorney was biased against a mother, despite representing her ex-husband in a prior divorce matter. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007).

#### Right to Counsel.

Juveniles have a due process right to counsel on appeal based on the application of the reasoning in *Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527, 40 Ohio Op. 2d 378 (1967). *Gilliam v. State*, 305 Ark. 438, 808 S.W.2d 738 (1991).

The provisions of *Anders v. California*, 87 S. Ct. 1396, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), which protect an adult defendant's right to counsel on appeal, should apply to the appeal of an adjudication of juvenile delinquency. *Gilliam v. State*, 305 Ark. 438, 808 S.W.2d 738 (1991).

Juvenile was deprived of his right to counsel during a contempt proceeding, even though the juvenile had the services of an attorney ad litem, because the ad



litem only represented the best interest of the juvenile, and not the juvenile's due process and other constitutional rights, as a defense attorney would. Ark. Dep't of Human Servs. v. Mainard, 358 Ark. 204, 188 S.W.3d 901 (2004).

Anders procedures apply in cases of indigent parent appeals from orders terminating parental rights, therefore, appointed counsel for an indigent parent on a first appeal from an order terminating parental rights may petition the appellate court to withdraw as counsel if, after a conscientious review of the record, counsel could find no issue or arguable merit for appeal; thus, the mother's attorney's motion to withdraw was premature until such time as a no-merit was filed. Linker-Flores v. Ark. Dep't of Human Servs., 359 Ark. 131, 194 S.W.3d 739 (2004).

In a parental rights termination case, counsel was not ineffective because, although the mother testified that she had initially refused to cooperate with the state on the advice of her first attorney, she never specifically raised the issue of his ineffectiveness. Jones v. Ark. Dep't of Human Servs., 361 Ark. 164, 205 S.W.3d 778 (2005).

Because of the similarities in termination of parental rights proceedings and criminal cases, the appellate court adopts the standard for ineffectiveness of counsel set out in Strickland. Jones v. Ark. Dep't of Human Servs., 361 Ark. 164, 205 S.W.3d 778 (2005).

Trial court erred in not appointing counsel for father at the dependency-neglect adjudication hearing because he was indigent and his children were effectively taken away from him when the father was ordered to move from the home. Clark v. Ark. Dep't of Human Servs., 90 Ark. App. 446, 206 S.W.3d 899 (2005).

After trial court entered order finding that child was a member of a family in need of services the father attempted to appeal on the child's behalf but he was not a licensed attorney who could represent

the child on an appeal, and the matter was not a final order. Bass v. State, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

### **Termination of Parental Rights.**

The requirement in subsection (f) of this section, that counsel be provided when the issue is termination of parental rights, is mandatory. Briscoe v. State, 323 Ark. 4, 912 S.W.2d 425 (1996).

Assuming, without deciding, that a mother had a due process right to counsel in a proceeding to terminate her parental rights, her request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, regardless of the provisions contained in this section, because her request did not satisfy constitutional standards for the waiver of counsel. Bearden v. State Dep't of Human Servs., 344 Ark. 317, 42 S.W.3d 397 (2001).

An indigent parent who has been appointed counsel in a proceeding to terminate his parental rights has a right to proceed without counsel; however, this right is not absolute and must be balanced against the best interests of the child, who faces the potential loss of the relationship with a natural parent. Bearden v. Arkansas Dep't of Human Servs., 72 Ark. App. 184, 35 S.W.3d 360 (2000), rev'd, 344 Ark. 317, 42 S.W.3d 397 (2001).

Because a mother failed to file a timely notice of appeal pursuant to Ark. R. App. P. Civ. 2 from the trial court's adjudication order, the appellate court was unable to consider the mother's arguments relating to errors made during the adjudication hearing; however, the appellate court did consider whether the trial court's failure to provide counsel to the mother during the adjudication hearing tainted the remainder of the case, which resulted in termination of parental rights under § 9-27-341 and found no such taint. Jefferson v. Ark. Dep't of Human Servs., 356 Ark. 647, 158 S.W.3d 129 (2004).

**Cited:** In re Hutton, 301 Ark. 538, 785 S.W.2d 33 (1990); Ingram v. State, 53 Ark. App. 77, 918 S.W.2d 724 (1996).

## **9-27-317. Waiver of right to counsel — Detention of juvenile — Questioning.**

(a) Waiver of the right to counsel at a delinquency or family in need of services hearing shall be accepted only upon a finding by the court from clear and convincing evidence, after questioning the juvenile, that:

(1) The juvenile understands the full implications of the right to counsel;

(2) The juvenile freely, voluntarily, and intelligently wishes to waive the right to counsel; and

(3) The parent, guardian, custodian, or counsel for the juvenile has agreed with the juvenile's decision to waive the right to counsel.

(b) The agreement of the parent, guardian, custodian, or attorney shall be accepted by the court only if the court finds:

(1) That the person has freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver of the right to counsel;

(2) That the person has no interest adverse to the juvenile; and

(3) That the person has consulted with the juvenile in regard to the juvenile's waiver of the right to counsel.

(c) In determining whether a juvenile's waiver of the right to counsel at any stage of the proceeding was made freely, voluntarily, and intelligently, the court shall consider all the circumstances of the waiver, including:

(1) The juvenile's physical, mental, and emotional maturity;

(2) Whether the juvenile understood the consequences of the waiver;

(3) In cases in which the custodial parent, guardian, or custodian agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian, or custodian understood the consequences of the waiver;

(4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;

(5) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;

(6) Whether the juvenile and his or her custodial parent, guardian, or custodian had been advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights; and

(7) Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the recorded waiver.

(d) No waiver of the right to counsel shall be accepted in any case in which the parent, guardian, or custodian has filed a petition against the juvenile, initiated the filing of a petition against the juvenile, or requested the removal of the juvenile from the home.

(e) No waiver of the right to counsel shall be accepted in any case in which counsel was appointed due to the likelihood of the juvenile's commitment to an institution under § 9-27-316(d).

(f) No waiver of counsel shall be accepted when a juvenile has been designated an extended juvenile jurisdiction offender.

(g) No waiver of the right to counsel shall be accepted when a juvenile is in the custody of the Department of Human Services, including the Division of Youth Services of the Department of Human Services.

(h)(1) All waivers of the right to counsel, except those made in the presence of the court pursuant to subsection (a) of this section, shall be in writing and signed by the juvenile.

(2)(A) When a custodial parent, guardian, or custodian cannot be located or is located and refuses to go to the place where the juvenile is being held, counsel shall be appointed for the juvenile.

(B) Procedures shall then be the same as if the juvenile had invoked counsel.

(i)(1)(A) Whenever a law enforcement officer has reasonable cause to believe that any juvenile found at or near the scene of a felony is a witness to the offense, he or she may stop that juvenile.

(B) After having identified himself or herself, the officer must advise the juvenile of the purpose of the stopping and may then demand of the juvenile his or her name, address, and any information the juvenile may have regarding the offense.

(C) Such detention shall in all cases be reasonable and shall not exceed fifteen (15) minutes, unless the juvenile shall refuse to give this information, in which case the juvenile, if detained further, shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his or her name, address, or the information the juvenile may have regarding the offense.

(2)(A) A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall advise the juvenile of his or her Miranda rights in the juvenile's own language.

(B) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense until the law enforcement officer has advised the juvenile of his or her rights pursuant to subdivision (i)(2)(C) of this section in the juvenile's own language.

(C) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile has indicated in any manner that he or she:

- (i) Does not wish to be questioned;
- (ii) Wishes to speak with his or her custodial parent, guardian, or custodian or to have that person present; or
- (iii) Wishes to consult counsel before submitting to any questioning.

(D) Any waiver of the right to counsel by a juvenile shall conform to subsection (h) of this section.

**History.** Acts 1989, No. 273, § 16; 1994 (2nd Ex. Sess.), No. 67, § 1; 1994 (2nd Ex. Sess.), No. 68, § 1; 1999, No. 1192, § 15; 2001, No. 1610, § 3; 2009, No. 759, § 2.

**Publisher's Notes.** Miranda rights, referred to in subdivision (i)(2)(A), are set

out in *Miranda v. Arizona*, 384 U.S. 436; 86 S. Ct. 1602; 16 L. Ed. 2d 694 (1966).

**Amendments.** The 2009 amendment inserted "custodial" in (c)(3), (c)(4), and (c)(6), inserted (c)(7), and made related changes.

## RESEARCH REFERENCES

**A.L.R.** Validity and efficacy of minor's waiver of right to counsel — cases decided since application of *Gault*, 387 U.S. 1, 87

S. Ct. 1428, 18 L. Ed. 2d 527, 40 Ohio Op. 2d 378 (1967). 101 A.L.R.5th 351.

**Ark. L. Rev. Comment:** The Perpetua-



tion of Illusory Rights in the Arkansas Juvenile Code, 57 Ark. L. Rev. 275 (2004).

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

## CASE NOTES

### ANALYSIS

Constitutionality.

In General.

Communication with Parent or Guardian.

Confession Held Admissible.

Court.

Duty of Juvenile.

Parental Consent.

Right to Counsel.

### Constitutionality.

This section is not arbitrary and capricious; rather, the legislature, in enacting the section, acknowledged that an older juvenile who commits a serious crime may not receive the protection of juvenile proceedings, but will face the consequences as an adult and, accordingly, a juvenile over the age of 16 who commits a crime that would subject him to adult punishment will not be accorded the protection of full parental involvement in the interrogation process. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996).

### In General.

A 13-year-old juvenile can make a knowing and intelligent waiver of rights without the presence of an adult. *Matthews v. State*, 67 Ark. App. 35, 991 S.W.2d 639 (1999).

Where a law enforcement officer read juvenile defendant his rights and obtained a signed waiver form before each interview with defendant, and defendant was tried as an adult, the interview procedures applicable to juvenile courts did not apply. *Shields v. State*, 357 Ark. 283, 166 S.W.3d 28 (2004).

Because subdivisions (i)(2)(A) and (B) of this section had not yet been enacted at the time defendant was questioned, defendant's reliance upon the statute was misplaced; the appellate court has a duty to construe statutes as having only a prospective operation unless the purpose and intention of the legislature to give them a retroactive effect is expressly declared or necessarily implied from the language used and, since the statute in question contained neither an emergency clause

nor any language indicating that it was to be applied retroactively, it could only be applied prospectively. *Jackson v. State*, 359 Ark. 87, 194 S.W.3d 757 (2004).

Pursuant to Ark. R. Crim. P. 3, the state's interlocutory appeal was dismissed because it failed to comply with the rule; the state's argument about whether defendant's grandmother was a "custodian" under subdivision (h)(2)(A) of this section was a question of fact not subject to appeal by the state under Rule 3. *State v. S.G.*, 373 Ark. 364, 284 S.W.3d 62 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 436 (June 26, 2008).

### Communication with Parent or Guardian.

There was no violation of a juvenile's right to speak to his mother during his questioning by police where there was evidence in the record that his mother requested to speak to him, but there was no evidence that the juvenile himself invoked his statutory right to have a parent or guardian present during questioning. *Conner v. State*, 334 Ark. 457, 982 S.W.2d 655 (1998).

Officers are not required to inform juveniles of their right to speak to their parent or guardian or to have one present during questioning. *Miller v. State*, 338 Ark. 445, 994 S.W.2d 476 (1999).

The right of a juvenile to speak to a parent or guardian does not apply where the juvenile is tried as an adult, since the procedures and penalties prescribed for adults apply in such a circumstance. *Ray v. State*, 65 Ark. App. 209, 987 S.W.2d 738 (1999).

A police officer is not required to inform a juvenile of his or her right to have a parent or guardian present during questioning. *Matthews v. State*, 67 Ark. App. 35, 991 S.W.2d 639 (1999).

It is unnecessary for a juvenile's parent, guardian, or custodian to consent to his or her waiver of the right to counsel in connection with a custodial statement. *Matthews v. State*, 67 Ark. App. 35, 991 S.W.2d 639 (1999).

Subdivision (i)(2)(C)(ii) of this section, which requires that a law enforcement officer not question a juvenile who wishes to speak with a parent or guardian or to have a parent or guardian present, does not apply to a juvenile whom the prosecuting attorney has exercised his discretion to charge as an adult. *Ray v. State*, 344 Ark. 136, 40 S.W.3d 243 (2001).

As the felony information charging defendant with capital murder was not filed in juvenile court, defendant had no right to assert that defendant's mother should have been present during defendant's questioning by detectives. *Jenkins v. State*, 348 Ark. 686, 75 S.W.3d 180 (2002).

Appellee juvenile's statements were properly suppressed in his delinquency action because although police detectives read him his Miranda rights and appellee understood those rights, the authorities failed to notify appellee's parent that he had been taken into custody as required by subdivision (h)(2)(A) of this section. *State v. L.P.*, 369 Ark. 21, 250 S.W.3d 248 (2007).

Under subdivision (h)(2)(A) of this section, authorities must notify a parent when his or her child has been taken into custody; the parent can then go to the place where the juvenile is being held and under subdivision (i)(2)(C) of this section, if the juvenile requests to speak to a parent that parent will be present. If, on the other hand, the parent chooses not to go to the place where the juvenile is being detained, counsel is appointed to represent the juvenile, and again, if the juvenile invokes his right to speak to an attorney, then one has already been appointed to represent him. *State v. L.P.*, 369 Ark. 21, 250 S.W.3d 248 (2007).

### **Confession Held Admissible.**

Defendant's confession was admissible where defendant and his mother signed the requisite rights waiver forms and both acknowledged that they understood that defendant did not have to give a statement and that anything he said could be used against him in court, both defendant and his mother agreed that his statement was not coerced, but was given because defendant's mother advised him to tell the truth, and where the evidence showed that defendant and his mother were repeatedly informed of his right to an attorney, and that if this right was invoked the

questioning would stop. *Ingram v. State*, 53 Ark. App. 77, 918 S.W.2d 724 (1996).

### **Court.**

The term "court" as used in this section means "the juvenile division of circuit court" under § 9-27-303(8) (now (12)). *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

### **Duty of Juvenile.**

Subsection (g) (now subdivision (i)(2)(C)(ii)) of this section places the burden on the child to ask to consult with a parent. *Isbell v. State*, 326 Ark. 17, 931 S.W.2d 74 (1996).

### **Parental Consent.**

This section's requirement that the custodial parent consent to a waiver does not apply to proceedings in circuit court; equally important, this section's requirement of parental consent to a waiver is limited to proceedings in the juvenile division of chancery court. *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

Where a prosecutor chooses to prosecute a juvenile in circuit court as an adult, the juvenile becomes subject to the procedures and penalties prescribed for adults; thus, when a juvenile is charged in circuit court, the requirement in subsection (f) of this section that the juvenile's parents consent to the juvenile's waiver of right to counsel, is not applicable. *Ring v. State*, 320 Ark. 128, 894 S.W.2d 944 (1995).

When a person under age 18 is charged as an adult in circuit court, failure to obtain a parent's signature on a waiver form does not render a confession inadmissible; rather, when a juvenile is charged as an adult, he becomes subject to the procedures applicable to adults. *Miskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996).

Where the defendant was charged as an adult in circuit court, the police were not required to obtain parental consent to his waiver of his right to counsel. *Conner v. State*, 334 Ark. 457, 982 S.W.2d 655 (1998).

### **Right to Counsel.**

After trial court entered order finding that child was a member of a family in need of services the father attempted to appeal on the child's behalf but he was not a licensed attorney who could represent

the child on an appeal, and the matter was not a final order. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

**Cited:** *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996); *Kennedy v. State*, 325 Ark. 3, 923 S.W.2d 274 (1996); *Carter*

*v. State*, 326 Ark. 497, 932 S.W.2d 324 (1996); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997); *Jordan v. State*, 356 Ark. 248, 147 S.W.3d 691 (2004); *Holland v. State*, 365 Ark. 55, 225 S.W.3d 353 (2006).

### **9-27-318. Filing and transfer to the criminal division of circuit court.**

(a) The state may proceed with a case as a delinquency only when the case involves a juvenile:

(1) Fifteen (15) years of age or younger when the alleged delinquent act occurred, except as provided by subdivision (c)(2) of this section; or

(2) Less than eighteen (18) years of age when he or she engages in conduct that if committed by an adult would be any misdemeanor.

(b) The state may file a motion in the juvenile division of circuit court to transfer a case to the criminal division of circuit court or to designate a juvenile as an extended juvenile jurisdiction offender when a case involves a juvenile:

(1) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that if committed by an adult would be:

(A) Murder in the second degree, § 5-10-103;

(B) Battery in the second degree in violation of § 5-13-202(a)(2), (3), or (4);

(C) Possession of a handgun on school property, § 5-73-119(a)(2)(A);

(D) Aggravated assault, § 5-13-204;

(E) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(F) Any felony committed while armed with a firearm;

(G) Soliciting a minor to join a criminal street gang, § 5-74-203;

(H) Criminal use of prohibited weapons, § 5-73-104;

(I) First degree escape, § 5-54-110;

(J) Second degree escape, § 5-54-111; or

(K) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Aggravated robbery, § 5-12-103;

(vi) Rape, § 5-14-103;

(vii) Battery in the first degree, § 5-13-201;

(viii) First degree escape, § 5-54-110; and

(ix) Second degree escape, § 5-54-111;

(2) At least fourteen (14) years old when he or she engages in conduct that constitutes a felony under § 5-73-119(a); or

(3) At least fourteen (14) years old when he or she engages in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two (2) years, three (3) times been adjudicated as a



delinquent juvenile for acts that would have constituted felonies if they had been committed by an adult.

(c) A prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile:

(1) At least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony; or

(2) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that, if committed by an adult, would be:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Kidnapping, § 5-11-102;

(D) Aggravated robbery, § 5-12-103;

(E) Rape, § 5-14-103;

(F) Battery in the first degree, § 5-13-201; or

(G) Terroristic act, § 5-13-310.

(d) If a prosecuting attorney can file charges in the criminal division of circuit court for an act allegedly committed by a juvenile, the state may file any other criminal charges that arise out of the same act or course of conduct in the same division of the circuit court case if, after a hearing before the juvenile division of circuit court, a transfer is so ordered.

(e) Upon the motion of the court or of any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a transfer hearing to determine whether to transfer the case to another division of circuit court.

(f) The court shall conduct a transfer hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the motion to transfer the case.

(g) In the transfer hearing, the court shall consider all of the following factors:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the judge.

(h)(1) The court shall make written findings on all of the factors set forth in subsection (g) of this section.

(2) Upon a finding by clear and convincing evidence that a case should be transferred to another division of circuit court, the judge shall enter an order to that effect.

(i) Upon a finding by the criminal division of circuit court that a juvenile fourteen (14) through seventeen (17) years of age and charged with the crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the criminal division of circuit court may enter an order to transfer as an extended juvenile jurisdiction case.

(j) If a juvenile fourteen (14) or fifteen (15) years of age is found guilty in the criminal division of circuit court for an offense other than an offense listed in subsection (b) or subdivision (c)(2) of this section, the judge shall enter a juvenile delinquency disposition under § 9-27-330.

(k) If the case is transferred to another division, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the division to which the case is transferred.

(l) Any party may appeal from a transfer order.

(m) The circuit court may conduct a transfer hearing and an extended juvenile jurisdiction hearing under § 9-27-503 at the same time.

**History.** Acts 1989, No. 273, § 17; 1991, No. 903, § 1; 1993, No. 1189, § 5; 1994 (2nd Ex. Sess.), No. 39, § 1; 1994 (2nd Ex. Sess.), No. 40, § 1; 1995, No. 797, § 1; 1997, No. 1229, § 7; 1997, No. 1299, § 7; 1999, No. 1192, § 16; 2001, No. 1582, § 2; 2003, No. 1166, § 10; 2003, No. 1809, § 3.

**Publisher's Notes.** Acts 1993, No. 1189, § 1, provided: "(a) The General Assembly of the State of Arkansas finds that the State of Arkansas is experiencing an

increase in violent crime committed by school age juveniles and the growth of street gangs made up largely of school age juveniles. The General Assembly of the State of Arkansas further finds that the number of school related crimes is increasing.

"(b) It is the intent of the General Assembly of the State of Arkansas to insure the safest possible learning environment for our students, teachers and other school employees."

## RESEARCH REFERENCES

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## CASE NOTES

### ANALYSIS

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### Constitutionality.

Subsection (c) of this section — which grants the prosecuting attorney, when a case involves a juvenile sixteen years of age or older at the time of the commission of a felony offense, "discretion to file a petition in juvenile court alleging delinquency or to file charges in circuit court and to prosecute as an adult" — does not violate federal and state constitutional guarantees of due process and equal protection. *Beck v. State*, 317 Ark. 154, 876 S.W.2d 561 (1994).

Court properly denied appellant's motion to declare this section unconstitutional because he failed to demonstrate that the statute was arbitrary or irrational; appellant lacked standing to chal-

lenge the constitutionality of the sentencing authorized by this section because there had been no formal adjudication of guilt and appellant had not been sentenced. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004).

### In General.

The operation of this section underscores the importance of the prosecutor's choice in charging because the General Assembly has not based court assignment in juvenile cases upon the nature of the offense committed but upon what the prosecutor chooses to charge. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

A juvenile court does not have authority to sua sponte transfer a case to the circuit court. *Chavez v. State*, 71 Ark. App. 29, 25 S.W.3d 431 (2000).

### Construction.

The plain meaning of the words "the prosecuting attorney has the discretion to file ... in circuit court and to prosecute as an adult" in subsection (c) of this section, is that when the prosecutor chooses to prosecute a juvenile in circuit court as an adult, the juvenile becomes subject to the procedures and penalties prescribed for adults. *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

The "case" transferred, within the meaning of subdivision (b)(2) of this section, includes a direct transfer of a first-degree battery charge to the juvenile court. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

The statutes of the juvenile court clearly support the conclusion that a direct transfer of a case is effected by a transfer order; the transfer of the case, viewed from the perspective of the transferor court, in the language of subdivision (b)(2) (now subsection (i)) of this section ("transfer the case to juvenile court"), is



mirrored in the language of § 9-27-310(a) which provides, from the perspective of the transferee court, that proceedings in juvenile court "shall be commenced by filing a petition with the clerk of the chancery court or by transfer by another court." *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

Although commission of a felony while armed with a firearm is a basis of concurrent jurisdiction of a circuit court over a juvenile under subdivision (b)(2)(M) (now (b)(1)(7)) of this section, it is not one of the factors to be considered in making the transfer decision; subsection (e) (now (g)) of this section provides the factors to be considered. *Green v. State*, 323 Ark. 635, 916 S.W.2d 756 (1996).

It is not necessary for the trial court to give equal weight to each of the factors in subsection (e) (now (g)) of this section. *Miller v. State*, 328 Ark. 121, 942 S.W.2d 825 (1997).

### **Applicability.**

Where juvenile had been arrested on a circuit court felony bench warrant, but neither the abstract nor transcript shows a copy of an indictment or information setting out the felony offenses with which the juvenile was charged, the juvenile had not been charged with a felony in circuit court as an adult when the law officers interrogated him and gained his confession; thus, the Juvenile Code was applicable at the time juvenile gave his statement, and his statement was therefore inadmissible at trial because the law enforcement officer's conduct failed to comport with required Juvenile Code procedures when they obtained juvenile's confession. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994), rehearing denied, 315 Ark. 658, 875 S.W.2d 814 (1994).

The circuit court did not have jurisdiction to try the defendant for second-degree battery whether he was 14 or 15 years old since second-degree battery is not an enumerated offense in this section. *Jones v. State*, 333 Ark. 208, 969 S.W.2d 618 (1998).

### **Age of Juvenile.**

Jurisdiction of the juvenile court is exclusive and original with respect to all offenses charged against a juvenile who is 14 years old at the time of the commission of those offenses, with the exception of

certain offenses enumerated in subdivision (b)(1) of this section; the same law applies to juveniles who are 15 years old at the time of the commission of the alleged offenses. *State v. Gray*, 319 Ark. 356, 891 S.W.2d 376 (1995).

Transfer properly denied where juvenile, charged with committing theft nine days before turning eighteen, had committed the prior crimes of theft, battery, and aggravated robbery, had violated probation, and where the juvenile was too close to age nineteen years and therefore ineligible under § 9-28-208 to be committed to the Division of Youth Services. *Brown v. State*, 330 Ark. 518, 954 S.W.2d 276 (1997).

Eighteen-year-old defendant seeking transfer to juvenile court argued that because he was seventeen when the alleged offenses occurred, he could be adjudicated delinquent and kept under the watchful eyes of the court until his twenty-first birthday; such argument was held unpersuasive when charges of serious and violent felony offenses remain to be adjudicated and the defendant was already eighteen years of age at the time of the hearing on the motion to transfer. *Brown v. State*, 330 Ark. 603, 954 S.W.2d 273 (1997).

### **Appellate Review.**

In juvenile transfer cases, the standard of review on appeal is no longer abuse of discretion. Acts 1989, No. 273 requires the trial court to support a juvenile transfer decision by a finding of clear and convincing evidence; consequently, findings of fact by the trial court will not be set aside unless clearly erroneous. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991), rehearing denied, 304 Ark. 393, 805 S.W.2d 80 (1991).

The standard of review in juvenile transfer cases is whether the trial judge's finding is clearly against the preponderance of the evidence, and findings of fact by the trial court will not be set aside unless clearly erroneous. *Smith v. State*, 307 Ark. 223, 818 S.W.2d 945 (1991); *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992).

The standard for review is whether the circuit court's denial of a transfer was clearly erroneous. *Vickers v. State*, 307 Ark. 298, 819 S.W.2d 13 (1991); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

The appellate court will not reverse a circuit court's denial of a motion to transfer a case to juvenile court unless it determines the denial was clearly erroneous. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993); *Hansen v. State*, 323 Ark. 407, 914 S.W.2d 737 (1996); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Although the circuit court is not required to make specific findings of fact in a juvenile transfer case, it is helpful on appellate review if the court has made findings of fact. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993).

Where defendant argued that the hearing on his motion to transfer this matter to juvenile court did not meet the due process standards required by this section, but failed to include a transcript of the juvenile transfer hearing in the record, the appellate court had to assume that the trial court ruled correctly based on the arguments and testimony presented. *Tucker v. State*, 313 Ark. 624, 855 S.W.2d 948 (1993), overruled, *Missildine v. State*, 314 Ark. 500, 863 S.W.2d 813 (1993).

On appeal of a decision to retain jurisdiction or transfer a case to the juvenile court, the trial court's findings will not be reversed unless clearly erroneous. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

The standard of review in juvenile transfer cases is whether the circuit court's denial of the motion to transfer was clearly erroneous. *Bell v. State*, 317 Ark. 289, 877 S.W.2d 579 (1994), rev'd, 324 Ark. 258, 920 S.W.2d 821 (1996).

Where an interlocutory appeal is permitted by subsection (h) (now (=it l=ro )) of this section, jurisdiction is properly in the Supreme Court under S. Ct. & Ct. App. Rule 1-2(a). *Sebastian v. State*, 318 Ark. 494, 885 S.W.2d 882 (1994).

A juvenile cannot challenge transfer orders on direct appeal from a judgment of conviction in the circuit court. *Hamilton v. State*, 320 Ark. 346, 896 S.W.2d 877 (1995), appeal dismissed, 323 Ark. 614, 918 S.W.2d 113 (1996).

For criminal prosecutions commenced after May 1, 1995, an appeal from an order granting or denying transfer of a case from one court to another having jurisdiction over juvenile matters must be considered by way of interlocutory appeal,

and an appeal from such an order after a judgment of conviction in circuit court is untimely and will not be considered. *Hamilton v. State*, 320 Ark. 346, 896 S.W.2d 877 (1995), appeal dismissed, 323 Ark. 614, 918 S.W.2d 113 (1996).

Meaningful review of the trial court's denial of a motion to transfer is impossible without a record of the hearing, and it is the appellant's duty to produce such a record. *Miller v. State*, 328 Ark. 121, 942 S.W.2d 825 (1997).

Motion for belated appeal was remanded for the circuit court to determine whether defendant requested either of his attorneys to file an appeal of an order denying the transfer of the cause against him to juvenile court on his behalf before the deadline for notice of appeal and, if such a request was made to either attorney, whether that attorney admitted fault for not timely filing the notice of appeal. *Bryant v. State*, 359 Ark. 244, 195 S.W.3d 924 (2004).

Denial of defendant's motion to transfer his case to the juvenile division of the lower court was upheld as defendant abandoned the sufficiency of the argument relating to the trial court's decision to deny his transfer, and the appellate court refused to consider defendant's arguments challenging the constitutionality of this section because they were not made in conjunction with a valid interlocutory claim. *Barton v. State*, 96 Ark. App. 23, 237 S.W.3d 512 (2006).

### **Burden of Proof.**

A moving party's burden of proof is separate and apart from the standard of clear and convincing evidence which the trial court must find. The ultimate issue under subsection (f) (now subdivision (h)(2)) of this section is not who has the burden of proof or who must meet that burden of proof, but rather, whether the trial court finds clear and convincing evidence. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991), rehearing denied, 304 Ark. 393, 805 S.W.2d 80 (1991).

The moving party seeking to transfer a defendant from one jurisdiction to another has the burden of proof. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991), rehearing denied, 304 Ark. 393, 805 S.W.2d 80 (1991); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

If the court finds that a juvenile should be tried as an adult, it must do so by clear



and convincing evidence. *Vickers v. State*, 307 Ark. 298, 819 S.W.2d 13 (1991); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Defendant has the burden of going forward with the proof to show a transfer to juvenile court is warranted under subdivision (b)(2) (now subsection (i)) of this section. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993).

It was not necessary that proof of each factor listed in subsection (e) (now (g)) of this section be presented or that the trial court give each factor equal weight. *Cole v. State*, 323 Ark. 136, 913 S.W.2d 779 (1996).

Defendant, as the party seeking the transfer, has the burden of proving the transfer is warranted under subsection (e) (now (g)) of this section; however, if the circuit court decides to retain jurisdiction of the juvenile's case, that decision must be supported by clear and convincing evidence under subsection (f) (now subdivision (h)(2)) of this section. *Guy v. State*, 323 Ark. 649, 916 S.W.2d 760 (1996).

A defendant seeking a transfer has the burden of proof to show a transfer is warranted under subsection (e) (now (g)) of this section; if he or she meets the burden, then the transfer is made unless there is clear and convincing countervailing evidence to support a finding that the juvenile should remain in circuit court. *Lammers v. State*, 324 Ark. 222, 920 S.W.2d 7 (1996).

While the trial court's decision to try a juvenile as an adult must be supported by clear and convincing evidence as required by subsection (f) (now subdivision (h)(2)) of this section, the court is not required to give equal weight to the statutory factors found in subsection (e) of this section. *Majesty v. State*, 330 Ark. 416, 954 S.W.2d 245 (1997).

### **Duty of Court.**

This section clearly delegates the responsibility for determining whether circuit or juvenile court is most appropriate to the court in which the charges were brought, and the abdication of this responsibility to the prosecutor was an abuse of the court's discretion. *Pennington v. State*, 305 Ark. 312, 807 S.W.2d 660 (1991).

### **Evidence.**

The information itself, which was evidence that a charge had been filed which

accused the juvenile of committing a serious offense and using violence in the process, was sufficient to meet the arduous standard of clear and convincing evidence under subsection (f) (now subdivision (h)(2)) of this section. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991), rehearing denied, 304 Ark. 393, 805 S.W.2d 80 (1991).

Where the trial judge relied on: (1) the seriousness of the alleged offense; (2) the fact the defendants were sixteen and seventeen years old; (3) one had a previous juvenile record; and (4) one shot a gun into a crowd of people, there was clear and convincing evidence that the defendants should be tried as adults. *Bradley v. State*, 306 Ark. 621, 816 S.W.2d 605 (1991).

Evidence sufficient to support a finding of clear and convincing evidence under subsection (e) (now subdivision (h)(2)) of this section. *Vickers v. State*, 307 Ark. 298, 819 S.W.2d 13 (1991); *Heagerty v. State*, 335 Ark. 520, 983 S.W.2d 908 (1998).

The evidence supporting the circuit court's refusal to transfer this case to juvenile court was clear and convincing. *Davis v. State*, 319 Ark. 613, 893 S.W.2d 768 (1995).

A court may no longer base its decision on a motion to transfer solely upon the allegations contained in the information; there must be some evidence to substantiate the serious and violent nature of the charges contained in the information. *Thompson v. State*, 330 Ark. 746, 958 S.W.2d 1 (1997).

### **Factors Considered.**

Trial court properly denied defendant's motion to transfer defendant's case to juvenile court after defendant was charged with being an accomplice to capital murder and being an accomplice to aggravated robbery because the trial court considered the factors in subsection (g) of this section; the evidence and testimony showed that defendant, who was 17 years old, was highly culpable. *Magana-Galdamez v. State*, 104 Ark. App. 280, — S.W.3d — (2009).

### **—In General.**

There was no requirement in former statute that equal weight be given to each factor, or that proof on all factors must be against the defendants in order for the court to retain jurisdiction. *Ashing v.*



State, 288 Ark. 75, 702 S.W.2d 20 (1986) (decision under prior law); *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992).

The factors to be considered in deciding whether to transfer a case to juvenile court are the seriousness of the alleged offense, whether violence was allegedly used, and whether the alleged offense is part of a pattern of adjudicated offenses, along with the prior history, character traits, mental maturity, and any other factors that reflect upon the juvenile's prospects for rehabilitation. *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

It is not necessary to give equal weight to each factor in juvenile transfer cases; further, that proof need not be introduced against the juvenile on each factor. *Hogan v. State*, 311 Ark. 262, 843 S.W.2d 830 (1992); *Macon v. State*, 323 Ark. 498, 915 S.W.2d 273 (1996); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

A trial court must evaluate the specific offense and the individual defendant to determine whether a transfer is warranted. *Fleetwood v. State*, 329 Ark. 327, 947 S.W.2d 387 (1997).

The denial of the motion to transfer was not improper because there was an affirmative defense of self-defense; the statutory scheme for determining whether a case should be transferred to juvenile court is not dependent upon affirmative defenses. *Fleetwood v. State*, 329 Ark. 327, 947 S.W.2d 387 (1997).

Consideration shown, even though the findings of fact rendered on a motion to transfer did not explicitly detail the rulings on the ten factors contained in the statute, where the abstract fully supported the conclusion that the factors were considered by the trial court. *Jongewaard v. State*, 71 Ark. App. 269, 29 S.W.3d 758 (2000).

It was proper for a court to consider an allegedly involuntary confession at a juvenile transfer hearing. *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W.3d 549 (2001).

### —Defendant's Character.

A defendant's demeanor at the transfer hearing is relevant to the factor of character traits indicating a juvenile's prospects for rehabilitation. *McGaughy v. State*, 321 Ark. 537, 906 S.W.2d 671 (1995).

### —Equal Weight.

There is no requirement that every element mentioned in this section be given equal weight. *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993).

The court need not give equal weight to each factor in subsection (e) (now (g)) of this section in considering juvenile transfer cases, and it is permissible to give substantial weight to the information. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

In making a determination whether to retain jurisdiction or to transfer a case to the juvenile court, the court is not required to give equal weight to the statutory factors in subsection (e) (now (g)) of this section, nor is the prosecutor required to introduce proof against the juvenile with regard to each factor. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

The court is not required to give each factor under subsection (e) (now (g)) of this section equal weight or force. *Walter v. State*, 317 Ark. 274, 878 S.W.2d 374 (1994).

In deciding whether to transfer a case from circuit to juvenile court, the trial court is not required to give every factor equal weight, and proof on every factor need not be introduced in order to warrant keeping a case in circuit court. *Bell v. State*, 317 Ark. 289, 877 S.W.2d 579 (1994), rev'd, 324 Ark. 258, 920 S.W.2d 821 (1996); *Johnson v. State*, 317 Ark. 521, 878 S.W.2d 758 (1994).

Trial court is not required to give equal weight to each of the factors in subsection (g) of this section, and a juvenile's lack of maturity, standing alone, does not mandate transfer to a juvenile division. *Richardson v. State*, 97 Ark. App. 52, 244 S.W.3d 736 (2006).

### —Multiple Factors.

Where the circuit judge properly considered each of the three factors outlined in subsection (e) (now (g)) of this section and determined that there was violence employed in the commission of the offenses, defendant had a repetitive pattern of adjudicated offenses, and that based on defendant's character traits rehabilitation would not work, and defendant failed to offer any proof in his favor, the circuit

judge properly determined the aggravated robbery charges should be tried in circuit court. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993).

Transfer to juvenile court denied where defendant was charged with first-degree murder, defendant's criminal history in the Juvenile Division, and the failed attempts at rehabilitation. *Jones v. State*, 326 Ark. 681, 933 S.W.2d 387 (1996).

In a prosecution for delivery of controlled substances, the circuit court properly retained jurisdiction given: (1) the seriousness of the alleged offense; (2) a prior adjudication for two offenses that would have been felonies if committed by an adult; (3) previous treatment under the juvenile justice system followed by violation of probation conditions; (4) failure to attend school or obtain a GED; and (5) impossibility of future rehabilitation with the Division of Youth Services due to defendant's age. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

The trial court's decision to deny a motion to transfer a criminal case to juvenile court was supported by clear and convincing evidence where the defendant was almost 19 years old, an officer testified that the defendant participated in a serious offense, that the victim was held at gunpoint, and that the defendant's mother confirmed that he had a prior history of criminal acts. *Rhodes v. State*, 332 Ark. 516, 967 S.W.2d 550 (1998).

#### —Other Factors.

Even though record indicated juvenile defendant had no prior adjudicated offenses, the trial court could properly consider testimony concerning his subsequent conviction for possession of a firearm, for which he was committed to the Youth Services Center, as a reason to deny transfer. *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

On a motion to transfer to juvenile court, the circuit court did not err in considering evidence that the defendant may have been an accomplice in an unrelated murder trial. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

#### —Seriousness of Offense.

The serious and violent nature of an offense is a sufficient basis for trying a juvenile as an adult. *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993); *Ray v.*

*State*, 65 Ark. App. 209, 987 S.W.2d 738 (1999).

While the use of violence in committing a serious offense is a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile, the commission of a serious offense without the use of violence is not a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile. *Sebastian v. State*, 318 Ark. 494, 885 S.W.2d 882 (1994); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

While the commission of a serious offense alone, without the use of violence, is not sufficient for a circuit court to retain jurisdiction of a juvenile, the trial court may rely on the violent nature of a crime in denying a motion to transfer to juvenile court. *Cole v. State*, 323 Ark. 136, 913 S.W.2d 779 (1996).

Seriousness alone is not a sufficient basis to refuse a transfer; the factor in subdivision (e)(1) (now (g)(1)) of this section may not form the basis of refusal to transfer absent a finding that "violence was employed." *Green v. State*, 323 Ark. 635, 916 S.W.2d 756 (1996).

No element of violence beyond that required to commit the crime is necessary under subdivision (e)(1) (now (g)(1)) of this section; however, that a crime is serious without the use of violence is not a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile. *Lammers v. State*, 324 Ark. 222, 920 S.W.2d 7 (1996).

The serious and violent nature of an offense is a sufficient basis for denying a motion to transfer and trying a juvenile as an adult. *Lammers v. State*, 324 Ark. 222, 920 S.W.2d 7 (1996).

Transfer denied where seventeen-year-old defendant was charged with aggravated assault and terroristic threatening because of defendant's age and because those offenses are of a serious and violent nature. *Sanders v. State*, 326 Ark. 415, 932 S.W.2d 315 (1996).

Transfer was appropriately denied because of the serious nature of the crimes charged, and the use of violence in the commission of the serious offenses. *Toliver v. State*, 330 Ark. 488, 953 S.W.2d 887 (1997).

#### —Written Findings.

Although a court must consider all of the factors enumerated in subsection (g) of



this section, the court is not required to make written findings with regard to all of those factors; the court is required to make written findings, but the extent of the written findings is not specified. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001).

### **Jurisdiction.**

Former statute, when construed with the rest of the Arkansas Juvenile Code, did not require that all juveniles under eighteen years of age be charged and tried for criminal acts in juvenile court; a prosecuting attorney had discretion to charge juveniles over fifteen years of age in juvenile, municipal, or circuit court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

The juvenile court has exclusive jurisdiction of all of the offenses charged against a juvenile, with the exception of those listed in subdivision (b)(1) of this section. *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Where a juvenile was charged with four offenses, only one of which, aggravated robbery, was listed in subdivision (b)(1) of this section, the circuit court should have dismissed the other three offenses not listed in subdivision (b)(1) of this section for lack of jurisdiction. *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991).

Trial court's decision that juvenile should be tried as an adult was clearly erroneous and against the preponderance of the evidence where juvenile had no prior record and there was no violence connected with his offense of possessing cocaine; to hold otherwise would be to allow the trial court to simply categorize all felonies as serious and utilize this reason alone to retain jurisdiction, rather than transfer the case based on consideration of all the statutory factors. *Blevins v. State*, 308 Ark. 613, 826 S.W.2d 265 (1992).

The General Assembly has not based court assignment in juvenile cases upon the nature of the offense committed but upon what the prosecutor chooses to charge. *Walker v. State*, 309 Ark. 23, 827 S.W.2d 637 (1992).

Where the circuit court acquired jurisdiction over a juvenile, criminal defendant, upon the filing of a first degree murder charge, it retained jurisdiction to

convict and sentence for the lesser included offense of manslaughter. *Walker v. State*, 309 Ark. 23, 827 S.W.2d 637 (1992).

The court's decision to retain jurisdiction was not clearly erroneous or clearly against the preponderance of the evidence. *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993).

Where the circuit court ordered defendant's case transferred to the juvenile division, noting defendant had no record of violence, but the juvenile division judge declined to accept the case and issued an order refusing jurisdiction, that order effectively denied transfer of defendant's case, and under subsection (h) of this section, the state should have appealed from the order if it desired to challenge the juvenile judge's decision. *State v. Hatton*, 315 Ark. 583, 868 S.W.2d 492 (1994).

Until a proper charging instrument (information or indictment) is filed by the state in a juvenile matter, the circuit court simply has no authority to proceed, much less rule on a transfer motion under this section. *Whitehead v. State*, 316 Ark. 563, 873 S.W.2d 800 (1994).

Where the state never filed a felony charge by information or indictment against a transferred juvenile, the circuit court had no authority to conduct a hearing under subsection (d) of this section. *Whitehead v. State*, 316 Ark. 563, 873 S.W.2d 800 (1994).

The term "jurisdiction," as used in subdivision (b)(2) of this section, means jurisdiction of the person of the juvenile. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

The jurisdiction of the juvenile court is exclusive and original with respect to all offenses charged against a juvenile who is aged 14 years at the time of the commission of those offenses, with the exception of those offenses enumerated in subdivision (b)(1) of this section. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

What the prosecutor chooses to charge in the circuit court with respect to a juvenile is not necessarily determinative of the forum for trial; that decision rests with the circuit court. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

The circuit court's in personam jurisdiction of a juvenile, once surrendered pursuant to a valid hearing on the motion to transfer, may not be reconferred upon the transferor court simply by the state's uni-



lateral action of there refiling its charges against that juvenile. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

Three theft charges against juvenile dismissed; since the charges were not among those enumerated in subdivision (b)(1) of this section, and since the prosecutor did not file the charges in juvenile court and then move to transfer them to circuit court, the circuit court never had jurisdiction of those charges. *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Where the information charged the defendant with a class C felony, jurisdiction was appropriate in circuit court. *Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997).

Trial court properly transferred burglary and theft-of-property charges to juvenile court while retaining jurisdiction of an aggravated robbery charge. *Sims v. State*, 329 Ark. 350, 947 S.W.2d 376 (1997).

The circuit court had no jurisdiction to try defendant for a theft charge where the alleged act was committed while defendant was 15 years of age. *Rice v. State*, 330 Ark. 257, 954 S.W.2d 216 (1997).

Circuit court found that defendant should not be transferred to the juvenile division; therefore, extended juvenile jurisdiction was not applicable. *Lofton v. State*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 363 (June 4, 2009).

### **Municipal Court.**

There is no statutory authority for a transfer from juvenile court to municipal court. *J.B. v. State*, 309 Ark. 70, 827 S.W.2d 144 (1992).

### **Procedure.**

On motion to transfer charges to juvenile court, even though the circuit court did not follow the usual procedure in allowing the defendant to present evidence first, where the defendant did not object to the procedure but instead participated in the hearing without objection, there was no error. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

### **Timely Hearing.**

Counsel's failure to demand a transfer hearing until well beyond the ninety-day period waived the right to insist on a timely hearing. *Cobbins v. State*, 306 Ark. 447, 816 S.W.2d 161 (1991).

### **Transfer Allowed.**

The trial court found clear and convincing evidence on many of the factors enumerated in the statute and transfer was appropriate. *Cobbins v. State*, 306 Ark. 447, 816 S.W.2d 161 (1991); *Holmes v. State*, 322 Ark. 574, 911 S.W.2d 256 (1995).

Trial court's decision that juvenile accused of criminal mischief and burglary should be prosecuted as an adult was not clearly erroneous where, although the juvenile did not employ violence against another person, the court specifically found that the charged offenses were very serious and that the juvenile was beyond rehabilitation under existing rehabilitation programs. Additionally, over \$35,000.00 damage was intentionally done, the juvenile had twice before been adjudicated delinquent, and he had failed to complete the prior probation successfully. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

The chancellor did not err in transferring the case of a juvenile defendant accused of robbery to circuit court where the evidence of the statutory factors was more than sufficient. *Myers v. State*, 317 Ark. 70, 876 S.W.2d 246 (1994).

Trial court was not clearly erroneous in transferring case to circuit court, where defendant was charged with a class B felony, there were firearms involved, the offense appeared to be part of a repetitive pattern of conduct which would demonstrate that defendant was beyond the current rehabilitation available, and defendant's history, traits and maturity also reflected adversely upon his prospects for rehabilitation. *Collins v. State*, 322 Ark. 161, 908 S.W.2d 80 (1995).

### **Transfer Denied.**

Transfer of defendant to juvenile court held properly denied. *Little v. State*, 261 Ark. 859, 554 S.W.2d 312 (1977), cert. denied, *Little v. Arkansas*, 435 U.S. 957, 98 S. Ct. 1590, 55 L. Ed. 2d 809 (1978); *Franklin v. State*, 7 Ark. App. 75, 644 S.W.2d 318 (1983); *Evans v. State*, 287 Ark. 136, 697 S.W.2d 879 (1985); *Ashing v. State*, 288 Ark. 75, 702 S.W.2d 20 (1986) (decisions under prior law); *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991), rehearing denied, 304 Ark. 393, 805 S.W.2d 80 (1991); *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992).

The state failed to produce countervailing evidence warranting retention of the case in circuit court where the state introduced no evidence of violence, negative past history or criminal records, or any character traits which would reflect poorly on the minor's prospects for rehabilitation. *Pennington v. State*, 305 Ark. 312, 807 S.W.2d 660 (1991).

Multiple counts of aggravated robbery were sufficient to withstand a motion for transfer to juvenile court when the opposing evidence was essentially the defendant's age. *Johnson v. State*, 307 Ark. 525, 823 S.W.2d 440 (1992).

Trial court's decision in refusing to transfer five charges against the defendant from circuit court to juvenile court was not clearly erroneous, where no commitment under juvenile jurisdiction could have resulted from a transfer due to defendant's age of 18 years. *Hogan v. State*, 311 Ark. 262, 843 S.W.2d 830 (1992).

Where the defendant was charged with four counts of aggravated robbery and terroristic acts, all of which involved patently violent acts, transfer to juvenile court was properly denied despite defendant not having been the actual triggerman. *Walter v. State*, 317 Ark. 274, 878 S.W.2d 374 (1994).

While it was true that there was no proof that the defendant pulled the trigger, this did not alter the fact that he was charged as an accomplice for his involvement in the murders; transfer to juvenile court was properly denied. *Bell v. State*, 317 Ark. 289, 877 S.W.2d 579 (1994), *rev'd*, 324 Ark. 258, 920 S.W.2d 821 (1996).

Where there is evidence that the current felony charges were part of a repetitive pattern of offenses, that past efforts at rehabilitation in the juvenile court system have not been successful, and that the pattern of offenses has become increasingly more serious, these factors alone prevent the appellate court from holding the trial court's denial of a transfer to juvenile court motion clearly erroneous. *Sebastian v. State*, 318 Ark. 494, 885 S.W.2d 882 (1994).

Transfer for statutory rape prosecution properly denied. *Hansen v. State*, 323 Ark. 407, 914 S.W.2d 737 (1996).

Where defendant's actions and offense exhibited a serious and violent nature and where defendant failed to show trial court

erred in finding that defendant was not a good prospect for rehabilitation, defendant's motion to transfer was properly denied. *Macon v. State*, 323 Ark. 498, 915 S.W.2d 273 (1996).

Where both the state's charges and testimony reflected that defendant, who was 15 years of age at the time of the alleged murder but 16 at the time of trial, was involved in the serious offense of capital felony murder, and had employed a gun in committing the offense, defendant's motion to transfer his case to juvenile court properly denied. *Wilkins v. State*, 324 Ark. 60, 918 S.W.2d 702 (1996).

Transfer denied pursuant to subdivision (e)(1) (now (g)(1)) of this section where defendant severely beat elderly shop owner during the course of a robbery. *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

Transfer denied where defendant caused two-year-old victim to bleed during commission of statutory rape, and where defendant was to turn 18 less than six months after trial. *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996).

Where sixteen-year-old defendant held a pistol to the victim's head and attempted to pull the trigger, sufficient violence was employed so as to uphold the denial of the transfer of the aggravated robbery and attempted capital murder charges to juvenile court. *Kindle v. State*, 326 Ark. 282, 931 S.W.2d 117 (1996).

Transfer to juvenile court denied where defendant was charged with aggravated robbery and where three counts of capital murder were pending against defendant. *Carroll v. State*, 326 Ark. 602, 932 S.W.2d 339 (1996).

Transfer of seventeen-year-old accomplice with a low I.Q., charged with capital murder, properly denied. *Carroll v. State*, 326 Ark. 882, 934 S.W.2d 523 (1996).

Transfer denied where the defendant had previously been charged with theft, had been on probation or in rehabilitation programs since he was 12 years old, and was over 18 years old at the time of trial. *Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997).

Transfer to juvenile court denied where the crimes, although property crimes, were intrusive to the victims and serious. *Smith v. State*, 328 Ark. 736, 946 S.W.2d 667 (1997).



Transfer denied, based on the seriousness of a Class B felony, and the fact that defendant had turned eighteen years of age. *Oglesby v. State*, 329 Ark. 127, 946 S.W.2d 693 (1997).

Fourteen-year old defendant tried as an adult where the offense charged was capital murder and the trial court determined that the child was beyond rehabilitation. *Ponder v. State*, 330 Ark. 43, 953 S.W.2d 555 (1997).

Transfer denied where juvenile was eighteen by the time of the hearing on the motion to transfer and where evidence linked the robbery charge to serious and violent conduct. *Brown v. State*, 330 Ark. 603, 954 S.W.2d 273 (1997).

Transfer of juvenile offender to juvenile court properly denied where he was charged with violent offenses and his prior record indicated an extensive history of offenses that had escalated in seriousness. *Wright v. State*, 331 Ark. 173, 959 S.W.2d 50 (1998).

The trial court had clear and convincing evidence to deny a motion to transfer a Class B felony terroristic act charge to the juvenile court where the terroristic act charge involved the firing of a gun at an occupied vehicle, the charge appeared to be part of a repetitive pattern of adjudicated offenses that increased in seriousness, and the defendant's prospects for rehabilitation were remote. *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998).

The trial court did not err in refusing to transfer the defendant's case to juvenile court where the court concluded that, because of the defendant's prior criminal history, his "lack of responsibility and mental maturity," and his numerous suspensions from and willful failure to attend school, his prospects for rehabilitation were poor or nonexistent and that jurisdiction of the case should be retained. *Landrum v. State*, 63 Ark. App. 12, 971 S.W.2d 278 (1998).

The trial court properly denied a motion by a 16 year old charged with residential burglary, rape, and terroristic threatening in the first degree to transfer the charges to juvenile court where, in addition to the seriousness and violent nature of the charges, the trial court also found the charges to be part of a repetitive pattern of adjudicated offenses of increasing violence towards persons. *Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754 (2000).

The circuit court did not clearly err in denying the defendant's motion to transfer, even if testimony by a detective regarding what he was told by a codefendant and regarding the defendant's own statement was improper, where (1) there was evidence that the case involved a home intrusion that resulted in injuries to one victim and the death of the victim's unborn child, and (2) the state presented, without objection from the defendant, evidence regarding his prior juvenile adjudications, his failure to comply with the conditions of his probation, and his commitment to the Division of Youth Services. *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W.3d 549 (2001).

Trial court erred in granting a defense motion to transfer a rape case to the juvenile division where defendant was 17 when he committed the rape, he caused a tear in the 14 year-old victim's vaginal area requiring surgery and hospitalization, and he had previously been adjudicated a juvenile offender for first-degree criminal mischief, which involved destruction or causing damage to property; there had been an increase in the seriousness of the alleged offenses, indicating a lack of rehabilitation. *State v. Graydon*, 86 Ark. App. 319, 184 S.W.3d 476 (2004).

Where sixteen-year-old appellant was charged with capital murder and residential burglary, he was tried as an adult and his request for transfer to the juvenile court was denied; in the absence of a final order, the court could not consider his constitutional challenge to subsection (1) of this section, the juvenile-transfer statute. *Barton v. State*, 366 Ark. 339, 235 S.W.3d 511 (2006).

Where a fifteen-year-old defendant and his accomplice were charged with the robbery of a grocery store, the circuit court did not err by denying defendant's motion to transfer his case to the juvenile division pursuant to this section. While defendant claimed that his accomplice put a gun to his head and intimidated him into participating in the robbery, a video surveillance tape in the store showed defendant entering the store first with a gun and proceeding with his accomplice against the store owner and his wife; therefore, the clear and convincing evidence did not support defendant's story that he was an unwilling participant in the robbery. *R.M.W. v. State*, 375 Ark. 1, 289 S.W.3d 46 (2008).



**Violent Offense.**

Rape is, by definition, a violent offense, and such a charge is sufficient to meet the requirements set out in subdivision (e)(1) (now (g)(1)) of this section for denial of transfer to juvenile court. *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992); *Davis v. State*, 319 Ark. 613, 893 S.W.2d 768 (1995); *Ring v. State*, 320 Ark. 128, 894 S.W.2d 944 (1995).

No added element of violence, beyond that included in the charged offense, must be shown under subdivision (e)(1) (now (g)(1)) of this section. *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992).

In determining whether "violence was employed," the question is not whether violence occurred; "to employ" means "to make use of." *Green v. State*, 323 Ark. 635, 916 S.W.2d 756 (1996).

The use of violence in committing a serious offense is a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile; it is of no consequence that the juvenile may or may not have personally used a weapon, as his association with the use of a weapon in the course of the crimes is sufficient to satisfy the violence criterion. *Guy v. State*, 323 Ark. 649, 916 S.W.2d 760 (1996).

Even though defendant may not have held a gun in each of three robberies with which he was charged, his association with the use of a weapon in the course of the crimes was sufficient to satisfy the violence criterion of this section. *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Transfer of juvenile charged with criminal mischief for throwing a glass bottle at a moving vehicle from a moving vehicle denied because criminal mischief is a Class C felony that satisfies the seriousness criterion of subsection (e) (now (g)) of this section and because violence was employed in the commission of the offense.

*Maddox v. State*, 326 Ark. 515, 931 S.W.2d 438 (1996).

Court properly denied appellant's motion to transfer to juvenile court after appellant was charged with capital murder when he was 14 years old because there was clear and convincing evidence that appellant should be tried as an adult; the offense was of a serious and violent nature. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004).

Trial court properly denied defendant's motions to transfer his case to the juvenile division and for extended juvenile jurisdiction where defendant, when he was almost 18 years of age, deliberately carried large pieces of concrete from below a viaduct to a protected niche and hurled them at oncoming traffic, killing one driver as a result; the need to protect society from lethal acts of violence directed against complete strangers for the sole purpose of providing amusement to the perpetrator was manifest. *Richardson v. State*, 97 Ark. App. 52, 244 S.W.3d 736 (2006).

**Written Findings.**

The appellant's failure to object to the absence of written findings precluded consideration of the point on appeal. *Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754 (2000).

**Cited:** *Bright v. State*, 307 Ark. 250, 819 S.W.2d 7 (1991); *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Oliver v. State*, 312 Ark. 466, 851 S.W.2d 415 (1993); *Robinson v. State*, 41 Ark. App. 20, 847 S.W.2d 49 (1993); *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994); *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996); *Humphrey v. State*, 327 Ark. 753, 940 S.W.2d 860 (1997); *Sanford v. State*, 331 Ark. 334, 962 S.W.2d 335 (1998); *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998).

**9-27-319. Double jeopardy.**

(a) No juvenile who has been subjected to an adjudication pursuant to a petition alleging him or her to be delinquent shall be tried later under criminal charges based upon facts alleged in the petition to find him or her delinquent.

(b) No juvenile who has been tried for a violation of the criminal laws of this state shall be later subjected to a delinquency proceeding arising out of the facts that formed the basis of the criminal charges.

**History.** Acts 1989, No. 273, § 18.

### CASE NOTES

**Cited:** Walker v. State, 309 Ark. 23, 827 S.W.2d 637 (1992); Oliver v. State, 312 Ark. 466, 851 S.W.2d 415 (1993).

### 9-27-320. Fingerprinting or photographing.

(a)(1) When a juvenile is arrested for any offense that if committed by an adult would constitute a felony or a Class A misdemeanor in which violence or the use of a weapon was involved, the juvenile shall be photographed and fingerprinted by the law enforcement agency.

(2) In the case of an allegation of delinquency, a juvenile shall not be photographed or fingerprinted under this subchapter by any law enforcement agency unless he or she has been taken into custody for the commission of an offense that, if committed by an adult, would constitute a felony or a Class A misdemeanor in which violence or the use of a weapon was involved.

(b)(1) Copies of a juvenile's fingerprints and photographs shall be made available only to other law enforcement agencies, the Arkansas Crime Information Center, prosecuting attorneys, and the juvenile division of circuit court.

(2) Photographs and fingerprints of juveniles adjudicated delinquent for offenses for which they could have been tried as adults shall be made available to prosecuting attorneys and circuit courts for use at sentencing in subsequent adult criminal proceedings against those same individuals.

(3)(A) When a juvenile departs without authorization from a youth services center or other facility operated by the Division of Youth Services of the Department of Human Services for the care of delinquent juveniles, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Youth Services of the Department of Human Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the Director of the Division of Youth Services of the Department of Human Services deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(B) When a juvenile departs without authorization from the Arkansas State Hospital, if at the time of departure the juvenile is committed as a result of an acquittal on the grounds of mental disease or defect for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Behavioral Health of the Department of Human Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(C) When a juvenile departs without authorization from a local juvenile detention facility, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the director of the juvenile detention facility shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(c) Each law enforcement agency in the state shall keep a separate file of photographs and fingerprints, it being the intention that the photographs and fingerprints of juveniles not be kept in the same file with those of adults.

(d) However, in any case in which the juvenile is found not to have committed the alleged delinquent act, the circuit court may order any law enforcement agency to return all pictures and fingerprints to the circuit court and shall order the law enforcement agency that took the juvenile into custody to mark the arrest record with the notation "found not to have committed the alleged offense".

**History.** Acts 1989, No. 273, § 19; 1993, No. 535, § 4; 1993, No. 551, § 4; 1994 (2nd Ex. Sess.), No. 69, § 3; 1994 (2nd Ex. Sess.), No. 70, § 3; 1997, No. 332, § 1; 2001, No. 177, § 1; 2001, No. 1712, § 1; 2003, No. 1166, § 11.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Publisher's Notes.** Acts 2001, No. 1712 specifically amended this section as amended by Acts 2001, No. 177.

**Cross References.** Fingerprinting, DNA sample collection, and photographing, § 12-12-1006.

## CASE NOTES

### Waiver.

Minor and his guardian signed valid waiver of minor's right not to be fingerprinted. *Ward v. State*, 293 Ark. 88, 733 S.W.2d 728 (1987), overruled, *MacKin-trush v. State*, 334 Ark. 390, 978 S.W.2d

293 (1998), overruled in part, *MacKin-trush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998) (decision under prior law).

**Cited:** *K.M. v. State*, 335 Ark. 85, 983 S.W.2d 93 (1998).

## 9-27-321. Statements not admissible.

Statements made by a juvenile to the intake officer or probation officer during the intake process before a hearing on the merits of the petition filed against the juvenile shall not be used or be admissible against the juvenile at any stage of any proceedings in circuit court or in any other court.

**History.** Acts 1989, No. 273, § 20; 2003, No. 1166, § 12.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and ef-

fective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now



includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

### CASE NOTES

#### **Applicability.**

An incriminating statement made to a state trooper is not prohibited from admission at trial by this section. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, *Manatt v. Arkansas*, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

Court properly admitted juvenile's statements at a probation revocation pro-

ceeding to her probation officer regarding taking drugs because this section protected juveniles from Miranda violations in a pre-adjudication context, not at a revocation hearing; in addition, the statement was properly admitted because the statement was offered to prove that defendant had violated the terms of her probation. *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

#### **9-27-322. Release from custody.**

(a) Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall immediately notify the juvenile's parent, guardian, or custodian of the location at which the juvenile is being held and of the reasons for the juvenile's detention if such notification has not previously taken place, and shall:

(1) Unconditionally release the juvenile to the juvenile's parent, guardian, or custodian;

(2) Release the juvenile to the juvenile's parent, guardian, or custodian upon the written promise of the parent, guardian, or custodian to bring the juvenile before the court when summoned; or

(3) Detain the juvenile pending a detention hearing before the circuit court.

#### **(b) CRITERIA FOR RELEASE BY INTAKE OFFICER.**

(1) In determining whether to detain a juvenile who has been taken into custody on an allegation of delinquency pending a detention hearing, the intake officer shall consider the following facts:

(A) Ties to the community, including:

(i) Place and length of residence;

(ii) School attendance;

(iii) Present and past employment;

(iv) Family relationships;

(v) References; and

(B) Nature of the alleged offense, including:

(i) Whether the offense would constitute a felony or misdemeanor;

(ii) The use of force or violence;

(iii) Prior juvenile or criminal record; and

(iv) Any history of failure to appear for court appearances.

(2) The intake officer may determine that there is no less restrictive alternative to detention if detention is necessary:

(A) To prevent imminent bodily harm to the juvenile or to another;

or

(B) To prevent flight when the juvenile is a fugitive or escapee from another jurisdiction.

(3) Only if a substantial number of the facts considered under subdivision (b)(1) of this section weigh against the juvenile or one (1) of the two (2) circumstances in subdivision (b)(2) of this section exists shall the juvenile be detained pending a detention hearing by the court.

**History.** Acts 1989, No. 273, § 21;  
2003, No. 1166, § 13.

#### CASE NOTES

**Cited:** K.W. v. State, 327 Ark. 205, 937  
S.W.2d 658 (1997).

#### **9-27-323. Diversion — Conditions — Agreement — Completion.**

(a) If the prosecuting attorney, after consultation with the intake officer, determines that a diversion of a delinquency case is in the best interests of the juvenile and the community, the officer with the consent of the juvenile and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.

(b) If the intake officer determines that a diversion of a family in need of services case is in the best interest of the juvenile and the community, the officer with the consent of the petitioner, juvenile, and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.

(c) In addition to the requirements of subsections (a) and (b) of this section, a diversion of a case is subject to the following conditions:

(1) The juvenile has admitted his or her involvement in:

(A) A delinquent act for a delinquency diversion; or

(B) A family in need of services act for a family in need of services diversion;

(2) The intake officer advises the juvenile and his or her parent, guardian, or custodian that they have the right to refuse a diversion of the case and demand the filing of a petition and a formal adjudication;

(3) Any diversion agreement shall be entered into voluntarily and intelligently by the juvenile with the advice of his or her attorney or by the juvenile with the consent of a parent, guardian, or custodian if the juvenile is not represented by counsel;

(4) The diversion agreement shall provide for the supervision of a juvenile or the referral of the juvenile to a public or private agency for services not to exceed six (6) months;

(5) All other terms of a diversion agreement shall not exceed nine (9) months;

(6) The juvenile and his or her parent, guardian, or custodian shall have the right to terminate the diversion agreement at any time and to request the filing of a petition and a formal adjudication.

(d)(1) The terms of the diversion agreement shall:

(A) Be in writing in simple, ordinary, and understandable language;

(B) State that the agreement was entered into voluntarily by the juvenile;

(C) Name the attorney or other person who advised the juvenile upon the juvenile's entering into the agreement; and

(D) Be signed by all parties to the agreement and by the prosecuting attorney if it is a delinquency case and the offense would constitute a felony if committed by an adult or a family in need of services case, pursuant to § 6-18-222.

(2) A copy of the diversion agreement shall be given to the juvenile, the counsel for the juvenile, the parent, guardian, or custodian, and the intake officer, who shall retain the copy in the case file.

(e) Diversion agreements shall be limited to providing for:

(1) Nonjudicial probation under the supervision of the intake officer or probation officer for a period during which the juvenile may be required to comply with specified conditions concerning his or her conduct and activities;

(2) Participation in a court-approved program of education, counseling, or treatment;

(3) Participation in a court-approved teen court; and

(4) Participation in a juvenile drug court program.

(f)(1) If a diversion of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period for which the agreement was entered into.

(2) If a petition is filed within this period, the juvenile's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

(g) The diversion agreement may be terminated, and the prosecuting attorney in a delinquency case or the petitioner in a family in need of services case may file a petition if at any time during the agreement period:

(1) The juvenile or his or her parent, guardian, or custodian declines to further participate in the diversion process;

(2) The juvenile fails, without reasonable excuse, to attend a scheduled conference;

(3) The juvenile appears unable or unwilling to benefit from the diversion process; or

(4) The intake officer becomes apprised of new or additional information that indicates that further efforts at diversion would not be in the best interests of the juvenile or society.

(h) Upon the satisfactory completion of the diversion period:

(1) The juvenile shall be dismissed without further proceedings;

(2) The intake officer shall furnish written notice of the dismissal to the juvenile and his or her parent, guardian, or custodian; and

(3) The complaint and the agreement, and all references thereto, may be expunged by the court from the juvenile's file.

(i)(1) A juvenile intake or probation officer may charge a diversion fee only after review of an affidavit of financial means and a determination of the juvenile's or the juvenile's parent's, guardian's, or custodian's ability to pay the fee.



(2) The diversion fee shall not exceed twenty dollars (\$20.00) per month to the juvenile division of circuit court.

(3) The court may direct that the fees be collected by the juvenile officer, sheriff, or court clerk for the county in which the fees are charged.

(4) The officer designated by the court to collect diversion fees shall maintain receipts and account for all incoming fees and shall deposit the fees at least weekly into the county treasury of the county where the fees are collected and in which diversion services are provided.

(5) The diversion fees shall be deposited into the account with the juvenile service fees under § 16-13-326.

(j)(1) In judicial districts having more than one (1) county, the judge may designate the treasurer of one (1) of the counties in the district as the depository of all juvenile fees collected in the district.

(2) The treasurer so designated by the court shall maintain a separate account of the juvenile fees collected and expended in each county in the district.

(3) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

(4) The funds derived from the collection of diversion fees shall be used by agreement of the judge or judges of the circuit court designated to hear juvenile cases in their district plan pursuant to Supreme Court Administrative Order Number 14, originally issued April 6, 2001, and the quorum court of the county to provide services and supplies to juveniles at the discretion of the juvenile division of circuit court.

**History.** Acts 1989, No. 273, § 22; 1995, No. 1003, § 1; 1997, No. 1118, § 1; 2003, No. 1809, § 4; 2007, No. 1022, § 1. **Amendments.** The 2007 amendment added (e)(4) and made related changes.

### **9-27-324. Preliminary investigation.**

(a) Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall also conduct a preliminary investigation.

(b) In the course of a preliminary investigation, the intake officer may:

(1) Interview the complainant, victim, or witnesses of the act and circumstances alleged in the complaint;

(2) Review existing records of the court, law enforcement agencies, and public records of other agencies;

(3) Hold conferences with the juvenile and his or her parent, guardian, or custodian for the purpose of interviewing them and discussing the disposition of the complaint.

(c) Any additional inquiries may be made only with the consent of the juvenile and his or her parent, guardian, or custodian.

(d)(1) Participation of the juvenile and his or her parent, guardian, or custodian in a conference with an intake officer shall be voluntary, with the right to refuse to continue participation at any time.

(2) At the conferences, the juvenile and his or her parent, guardian, or custodian shall be advised of the juvenile's right to assistance of counsel and the right to remain silent when questioned by the intake officer.

**History.** Acts 1989, No. 273, § 23.

### **9-27-325. Hearings — Generally.**

(a)(1)(A) All hearings shall be conducted by the judge without a jury, except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et seq.

(B) If a juvenile is designated an extended juvenile jurisdiction offender, the juvenile shall have a right to a jury trial at the adjudication.

(2) The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(3) The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney.

(4) The waiver shall be in writing and signed by the juvenile and the juvenile's attorney.

(b)(1) The defendant need not file a written responsive pleading in order to be heard by the court.

(2) In dependency-neglect proceedings, retained counsel shall file a notice of appearance immediately upon acceptance of representation, with a copy to be served on the petitioner.

(c)(1) At the time set for hearing, the court may:

(A) Proceed to hear the case only if the juvenile is present or excused for good cause by the court; or

(B) Continue the case upon determination that the presence of an adult defendant is necessary.

(2) Upon determining that a necessary party is not present before the court, the court may:

(A) Issue an order for contempt if the juvenile was served with an order to appear; or

(B) Issue an order to appear, with a time and place set by the court for hearing, if the juvenile was served with a notice of hearing.

(d)(1) The court shall be a court of record.

(2) A record of all proceedings shall be kept in the same manner as other proceedings of circuit court and in accordance with rules promulgated by the Supreme Court.

(e)(1) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(2)(A) Upon motion of any party, the court may order that the father, mother, and child submit to scientific testing for drug or alcohol abuse.

(B) A written report of the test results prepared by the person conducting the test, or by a person under whose supervision or

direction the test and analysis have been performed, certified by an affidavit subscribed and sworn to by him or her before a notary public, may be introduced in evidence without calling the person as a witness unless a motion challenging the test procedures or results has been filed within thirty (30) days before the hearing and bond is posted in an amount sufficient to cover the costs of the person's appearance to testify.

(C)(i) If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one (1) person's witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person's signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of those specimens.

(D) Whenever a court orders scientific testing for drug or alcohol abuse and one (1) of the parties refuses to submit to the testing, that refusal shall be disclosed at trial and may be considered civil contempt of court.

(f) Except as otherwise provided in this subchapter, the Arkansas Rules of Civil Procedure shall apply to all proceedings and the Arkansas Rules of Criminal Procedure shall apply to delinquency proceedings.

(g) All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure.

(h)(1) The petitioner in all proceedings shall bear the burden of presenting the case at hearings.

(2) The following burdens of proof shall apply:

(A) Proof beyond a reasonable doubt in delinquency hearings;

(B) Proof by a preponderance of the evidence in dependency-neglect, family in need of services, and probation revocation hearings; and

(C) Proof by clear and convincing evidence for hearings to terminate parental rights and transfer hearings and in hearings to determine whether or not reunification services shall be provided.

(i)(1) All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed.

(2) All other hearings may be closed within the discretion of the court, except that in delinquency cases the juvenile shall have the right to an open hearing, and in adoption cases the hearings shall be closed as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.

(j) Except as provided in § 9-27-502, in any juvenile delinquency proceeding in which the juvenile's fitness to proceed is put in issue by any party or the court, the provisions of § 5-2-301 et seq. shall apply.

(k) In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court.



(1)(1) The Department of Human Services shall provide to foster parents and preadoptive parents of a child in department custody notice of any proceeding to be held with respect to the child.

(2) Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.

(3)(A) The court shall allow foster parents, preadoptive parents, and relative caregivers an opportunity to be heard in any proceeding held with respect to a child in their care.

(B) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceeding solely on the basis that the persons are entitled to notice and the opportunity to be heard.

(C) Foster parents, preadoptive parents, and relative caregivers shall have the right to be heard in any proceeding.

(m)(1)(A) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

(i) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and

(iv) Notice to a grandparent under subdivision (m)(1)(A) of this section shall be given by the department; and

(B) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

(i) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(2) For purposes of this subsection, "grandparent" does not mean a parent of a putative father of a child.

(n)(1) The department shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of a juvenile transferred to the custody of the department.

(2) The notice provided under this subsection shall:

(A) Be within thirty (30) days after the juvenile is transferred to the custody of the department; and

(B) Include adult grandparents or adult relatives suggested by the parents.

(3) The notice provided under this subsection is not required if the adult grandparents or other adult relatives have:

(A) A pending charge or past conviction or plea of guilty or nolo contendere for family or domestic violence; or

(B) A true finding of child maltreatment in the Child Maltreatment Central Registry.

(4) The content of the notice under this subsection shall include:

(A) A statement that the juvenile has been or is being removed from the parent;

(B) The option to participate in the care of, placement with, and visitation with the child, including any options that may be lost by failing to respond to the notice;

(C) The requirements to become a provisional foster home and the additional services and supports that are available for children in a foster home; and

(D) If kinship guardianship is available, how the relative could enter into an agreement with the department.

**History.** Acts 1989, No. 273, § 24; 1993, No. 758, § 5; 1995, No. 533, § 6; 1997, No. 1118, § 2; 1999, No. 401, § 5; 1999, No. 1192, § 17; 2001, No. 987, § 3; 2001, No. 1497, § 2; 2001, No. 1503, § 5; 2003, No. 1166, § 14; 2003, No. 1319, § 12; 2007, No. 587, § 12; 2009, No. 1311, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2007 amendment inserted "Health and" in (1)(1); substituted "proceeding" for "review or hearing" in (1)(1), (1)(3)(A), and (1)(3)(B); and added (1)(3)(C).

The 2009 amendment added (n).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Juvenile Code, 26 U. Ark. Little Rock L. Rev. 417.

## CASE NOTES

### ANALYSIS

Burden of Proof.  
Jury Trial.

### Burden of Proof.

Trial court erred in finding that father's child was a dependent-neglected child under § 9-27-303(17) and (36) because, after the father was incarcerated, there were two different family members who stated they were willing to care for the child; thus, the state failed to prove by a preponderance of the evidence that the child was neglected. *Moiser v. Ark. Dep't of Human*

*Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

Trial court did not err in finding that the Department of Health and Human Services failed to meet its burden of proving that children were dependent-neglected because there was no evidence other than the fact that their father had pleaded guilty to sexual assault of other minors. *Ark. HHS v. Mitchell*, 100 Ark. App. 45, 263 S.W.3d 574 (2007).

### Jury Trial.

Defendant charged with delinquency and theft had no right to a jury trial.

Elkins v. State, 7 Ark. App. 166, 646 S.W.2d 15 (1983) (decision under prior law).

The revisions found in the Juvenile Code of 1989 do not provide for a jury trial. Valdez v. State, 33 Ark. App. 94, 801 S.W.2d 659 (1991).

**Cited:** Smith v. State, 307 Ark. 223, 818 S.W.2d 945 (1991); Nance v. Arkansas Dep't of Human Servs., 316 Ark. 43, 870 S.W.2d 721 (1994); Arkansas Dep't of Hu-

man Servs. v. Hardy, 316 Ark. 119, 871 S.W.2d 352 (1994); Arkansas Best Corp. v. General Elec. Capital Corp., 317 Ark. 238, 878 S.W.2d 708 (1994); Mason v. State, 323 Ark. 361, 914 S.W.2d 751 (1996); Johnston v. Arkansas Dep't of Human Servs., 55 Ark. App. 392, 935 S.W.2d 589 (1996); K.W. v. State, 327 Ark. 205, 937 S.W.2d 658 (1997); K.N. v. State, 360 Ark. 579, 203 S.W.3d 103 (2005).

### 9-27-326. Detention hearing.

(a) If a juvenile is taken into custody on an allegation of delinquency, violation of Division of Youth Services of the Department of Human Services aftercare, violation of probation, or violation of a court order and not released by the law enforcement officer or intake officer, a detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile was taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day. Otherwise, the juvenile shall be released.

(b) Prior written notice of the time, place, and purpose of the detention hearing shall be given to:

- (1) The juvenile;
- (2) The juvenile's attorney; and
- (3)(A) The juvenile's parent, guardian, or custodian.

(B) However, if the court finds after a reasonable, diligent effort that the petitioner was unable to notify the parent, guardian, or custodian, the hearing may proceed without notice to that party.

(c) The petitioner shall have the burden of proof by clear and convincing evidence that the restraint on the juvenile's liberty is necessary and that no less restrictive alternative will reduce the risk of flight, or of serious harm to property, or to the physical safety of the juvenile or others.

(d) During the detention hearing, the court shall:

- (1) Inform the juvenile:
  - (A) Of the reasons continued detention is being sought;
  - (B) That he or she is not required to say anything, and that anything he or she says may be used against him or her;
  - (C) That he or she has a right to counsel; and
  - (D) That before the hearing proceeds further he or she has the right to communicate with his or her attorney, parent, guardian, or custodian, and that reasonable means will be provided for him or her to do so;

(2) Admit testimony and evidence relevant only to determination that probable cause exists that the juvenile committed the offense as alleged and that detention of the juvenile is necessary; and

(3) Assess the following factors in determining whether to release the juvenile prior to further hearings in the case:

- (A) Place and length of residence;



- (B) Family relationships;
- (C) References;
- (D) School attendance;
- (E) Past and present employment;
- (F) Juvenile and criminal records;
- (G) The juvenile's character and reputation;
- (H) Nature of the charge being brought and any mitigating or aggravating circumstances;

(I) Whether detention is necessary to prevent imminent bodily harm to the juvenile or to another;

(J) The possibility of additional violations occurring if the juvenile is released;

(K) Factors that indicate the juvenile is likely to appear as required; and

(L) Whether conditions should be imposed on the juvenile's release.

(e)(1) The court shall release the juvenile when there is a finding that no probable cause exists that the juvenile committed the offense as alleged.

(2) The court, upon a finding that detention is not necessary, may release the juvenile:

(A) Upon his or her personal recognizance;

(B) Upon an order to appear;

(C) To his or her parent, guardian, or custodian upon written promise to bring the juvenile before the court when required;

(D)(i) To the care of a qualified person or agency agreeing to supervise the juvenile and assist him or her in appearing in court.

(ii) Provided, that for purposes of this subdivision (e)(2)(D), "qualified agency" does not include the Department of Human Services or any of its divisions;

(E)(i) Under the supervision of the probation officer or other appropriate public official.

(ii) However, for purposes of this subdivision (e)(2)(E), "appropriate public official" does not include the department;

(F) Upon reasonable restrictions on activities, movements, associations, and residences of the juvenile;

(G) On bond to his or her parent, guardian, or custodian; or

(H) Under such other reasonable restrictions to ensure the appearance of the juvenile.

(3) If the court determines that only a money bond will ensure the appearance of the juvenile, the court may require:

(A) An unsecured bond in an amount set by the judicial officer;

(B) A bond accompanied by a deposit of cash or securities equal to ten percent (10%) of the face amount set by the court that shall be returned at the conclusion of the proceedings if the juvenile has not defaulted in the performance of the conditions of the bond; or

(C) A bond secured by deposit of the full amount in cash, or by other property, or by obligation of qualified securities.

(4) Orders of conditional release may be modified upon notice, hearing, and good cause shown.

(5)(A) If the court releases a juvenile under subdivision (e)(2)(D) of this section, the court may, if necessary for the best interest of the juvenile, request that the department immediately initiate an investigation as to whether the juvenile is in imminent danger or a situation exists whereby the juvenile is dependent-neglected.

(B) The court shall not place preadjudicated juveniles in the custody of the department except as provided in § 12-12-516 [repealed].

(f)(1) If the juvenile who is being detained is also in the custody of the department pursuant to a family in need of services or dependency-neglect petition and the court does not keep the juvenile in detention, then any issues regarding placement of the juvenile shall be addressed only in the family in need of services or dependency-neglect case and shall not be an issue addressed, nor shall any orders be entered in the delinquency case regarding placement of the juvenile.

(2) Within ten (10) days of the entry of any order in the delinquency case, the prosecuting attorney shall file a copy of the order in the juvenile's dependency-neglect or family in need of services case.

**History.** Acts 1989, No. 273, § 25; 1995, No. 533, § 7; 2001, No. 987, § 4; 2003, No. 1319, § 13; 2007, No. 587, § 13; 2009, No. 956, § 9.

**Amendments.** The 2007 amendment added (f).

The 2009 amendment inserted "violation of Division of Youth Services after-care" in (a), and made a related change.

## CASE NOTES

### ANALYSIS

**Construction.**  
**Jurisdiction.**

#### **Construction.**

The word "shall," relating to the duties of the judge, requires mandatory compliance. *Baumer v. State*, 300 Ark. 160, 777 S.W.2d 847 (1989) (decision under prior law).

#### **Jurisdiction.**

Former statute, when construed with the rest of the Arkansas Juvenile Code,

did not require that all juveniles under eighteen years of age be charged and tried for criminal acts in juvenile court; a prosecuting attorney had discretion to charge juveniles over fifteen years of age in juvenile, municipal, or circuit court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

**Cited:** *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992).

## 9-27-327. Adjudication hearing.

(a)(1) An adjudication hearing shall be held to determine whether the allegations in a petition are substantiated by the proof.

(2) The dependency-neglect adjudication hearing shall be held within thirty (30) days after the probable cause hearing under § 9-27-315, but on motion of the court and parties, for good cause shown, it

may be continued for no more than thirty (30) days following the first thirty (30) days.

(b) If a juvenile is in detention, an adjudication hearing shall be held, unless the juvenile or a party is seeking an extended juvenile jurisdiction designation, not later than fourteen (14) days from the date of the detention hearing unless waived by the juvenile or good cause is shown for a continuance.

(c) In extended juvenile jurisdiction offender proceedings, the adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(d) Following an adjudication in which a juvenile is found to be delinquent, dependent-neglected, or a member of a family in need of services, the court may order any studies, evaluations, or predisposition reports, if needed, that bear on disposition.

(e)(1) All such reports shall be provided in writing to all parties and counsel at least two (2) days prior to the disposition hearing.

(2) All parties shall be given a fair opportunity to controvert any parts of such reports.

(f) In dependency-neglect cases, a written adjudication order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

**History.** Acts 1989, No. 273, § 26; 1997, No. 1227, § 5; 1999, No. 401, § 6; 1999, No. 1192, § 18; 2001, No. 1503, § 6; 2003, No. 1319, §§ 14, 15; 2007, No. 587, § 14; 2009, No. 956, § 10.

**Amendments.** The 2007 amendment deleted former (a)(1)(B)(ii) and made related changes.

The 2009 amendment deleted former (a)(2).

## CASE NOTES

### ANALYSIS

Burden of Proof.  
Timeliness.

#### Burden of Proof.

State failed to establish by a preponderance of the evidence that father's child should be adjudicated dependent under § 9-27-303(17) and (36) because, after the father was incarcerated, there were two different family members who stated they were willing to care for the child. *Moiser v. Ark. Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

#### Timeliness.

Although the fourteen day requirement of this section is mandatory, it is not jurisdictional; a juvenile's failure to demand a hearing waived the right to insist

on a timely hearing, particularly since subsection (b) of this section expressly provides that the time limitation may be waived by the juvenile. *Robinson v. State*, 41 Ark. App. 20, 847 S.W.2d 49 (1993).

Where child was taken to a hospital twice with multiple bone fractures, the trial court's refusal to grant the parents' request for a continuance to determine if the child had brittle-bone syndrome was not prejudicial because the trial court set the adjudication hearing as far out as possible, with the expectation that test results would be returned by then. *Neves da Rocha v. Ark. Dep't of Human Servs.*, 93 Ark. App. 386, 219 S.W.3d 660 (2005).

**Cited:** *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Dover v. Arkansas Dep't of Human Servs.*, 62 Ark. App. 37, 968 S.W.2d 635 (1998).



**9-27-328. Removal of juvenile.**

(a) Before a circuit court may order any dependent-neglected juvenile or family in need of services juvenile removed from the custody of his or her parent, guardian, or custodian and placed with the Department of Human Services or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall order family services appropriate to prevent removal unless the health and safety of the juvenile warrant immediate removal for the protection of the juvenile.

(b) When the court orders a dependent-neglected or family in need of services juvenile removed from the custody of a parent, guardian, or custodian and placed in the custody of the department or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall make these specific findings in the order:

(1) In the initial order of removal, the court must find:

(A) Whether it is contrary to the welfare of the juvenile to remain at home;

(B) Whether the removal and the reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile; and

(C) Whether the removal is in the best interest of the juvenile; and

(2) Within sixty (60) days of removal, the court must find:

(A) Which family services were made available to the family before the removal of the juvenile;

(B) What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could safely remain at home while family services were provided;

(C) Why efforts made to provide the family services described did not prevent the removal of the juvenile; and

(D) Whether efforts made to prevent the removal of the juvenile were reasonable, based upon the needs of the family and the juvenile.

(c) When the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services being provided, the responsible state agency shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal.

(d) When the court finds that the department's preventive or reunification efforts have not been reasonable, but further preventive or reunification efforts could not permit the juvenile to remain safely at home, the court may authorize or continue the removal of the juvenile but shall note the failure by the department in the record of the case.

(e)(1) In all instances of removal of a juvenile from the home of his or her parent, guardian, or custodian by a court, the court shall set forth in a written order:

(A) The evidence supporting the decision to remove;

(B) The facts regarding the need for removal; and

(C) The findings required by this section.

(2) The written findings and order shall be filed by the court or by a party or party's attorney as designated by the court within thirty (30) days of the date of the hearing at which removal is ordered or prior to the next hearing, whichever is sooner.

(f) Within one (1) year from the date of removal of the juvenile and annually thereafter, the court shall determine whether the department has made reasonable efforts to obtain permanency for the juvenile.

**History.** Acts 1989, No. 273, § 27; 1995, No. 533, § 8; 1995, No. 1337, §§ 3, 4; 1997, No. 1227, § 6; 1999, No. 401, § 7; 1999, No. 1340, § 14; 2001, No. 1503, § 7; 2003, No. 1166, § 15; 2003, No. 1319, § 16; 2007, No. 587, § 15.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery

courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2007 amendment added (f).

## CASE NOTES

### ANALYSIS

Family Services.  
Findings of Fact.  
First Contact.  
Reasonable Efforts.  
Unfitness of Natural Parent.

#### Family Services.

Juvenile court's order compelling department of human services to provide transportation benefits to family in the form of bus tokens and to provide family remainder of the full entitlement of preventive funds was permissible under this section. *Arkansas Dep't of Human Servs. v. Clark*, 304 Ark. 403, 802 S.W.2d 461 (1991).

#### Findings of Fact.

This section requires specific findings of fact only where the court orders actual removal from a custodial parent. *Arkansas Dep't of Human Servs. v. R. P.*, 333 Ark. 516, 970 S.W.2d 225 (1998).

In reversing an order granting custody of a minor child to a third party, the appellate court determined that the trial judge failed to make the written findings required by the statute, and that the evidence did not support the findings that were made in the order; there was no evidence as to the reason why it was necessary to remove the child from her mother's custody in order to protect her

health and safety, there was no evidence of services or assistance offered to the family, and the state saw no need to deprive the mother of the custody of her other infant daughter due to health and safety issues. *Robbins v. State*, 80 Ark. App. 204, 92 S.W.3d 707 (2002).

#### First Contact.

Where child was strangled by her father and removed from the home by her stepmother the next day, and the state agency investigation into the incident occurred shortly thereafter, the "first contact" requirement of subsection (b) of this section was satisfied because the investigation occurred as the result of an emergency situation. *Gullick v. Arkansas Dep't of Human Servs.*, 326 Ark. 475, 931 S.W.2d 786 (1996).

#### Reasonable Efforts.

The findings required by former subsection (a) of this section are not to be viewed as mere formalities since Congress requires that, before a state may be eligible for federal matching funds, the removal of a child from the home must be the result of a judicial determination that reasonable efforts were made to prevent or eliminate the need for removal of the child; however, under subsection (b) of this section, the federal "reasonable efforts" requirement is deemed to have been met when the state agency's first contact with the family occurs during an emergency in

which the juvenile could not safely remain at home. *Gullick v. Arkansas Dep't of Human Servs.*, 326 Ark. 475, 931 S.W.2d 786 (1996).

**Unfitness of Natural Parent.**

Juvenile court committed error where it awarded custody of child to grandmother

without determining that natural mother was an unfit parent. *Schuh v. Roberson*, 302 Ark. 305, 788 S.W.2d 740 (1990).

**Cited:** *Arkansas Dep't of Human Servs. v. State*, 318 Ark. 294, 885 S.W.2d 14 (1994).

**9-27-329. Disposition hearing.**

(a) If the circuit court finds that the petition has been substantiated by the proof at the adjudication hearing, a disposition hearing shall be held for the court to enter orders consistent with the disposition alternatives.

(b) When a juvenile is held in detention after an adjudication hearing for delinquency pending a disposition hearing, the disposition hearing shall be held no more than fourteen (14) days following the adjudication hearing.

(c) In dependency-neglect proceedings, the disposition hearing may be held immediately following or concurrent with the adjudication hearing but in any event shall be held no more than fourteen (14) days following the adjudication hearing.

(d) In considering the disposition alternatives, the court shall give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public.

(e) In dependency-neglect cases, a written disposition order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(f) At the disposition hearing, the court may admit into evidence any victim impact statements and studies or reports that have been ordered, even though they are not admissible at the adjudication hearing.

**History.** Acts 1989, No. 273, § 28; 1997, No. 1227, § 7; 1999, No. 401, § 8; 2001, No. 1503, § 8; 2003, No. 1809, § 5; 2009, No. 956, § 11.

**Amendments.** The 2009 amendment deleted (c)(2)-(5) and redesignated subsection (c) accordingly.

**9-27-330. Disposition — Delinquency — Alternatives.**

(a) If a juvenile is found to be delinquent, the circuit court may enter an order making any of the following dispositions based upon the best interest of the juvenile:

(1)(A) Transfer legal custody of the juvenile to any licensed agency responsible for the care of delinquent juveniles or to a relative or other individual.

(B)(i) Commit the juvenile to the Division of Youth Services of the Department of Human Services using the risk assessment system for Arkansas juvenile offenders distributed and administered by the Administrative Office of the Courts.



(ii) The risk assessment may be modified by the Juvenile Judges Committee of the Arkansas Judicial Council with the division.

(iii)(a) In an order of commitment, the court may recommend that a juvenile be placed in a treatment program or community-based program instead of a youth services center and shall make specific findings in support of such a placement in the order.

(b) The court shall also specify in its recommendation whether it is requesting a Division of Youth Services aftercare plan upon the juvenile's release from the division.

(iv) Upon receipt of an order of commitment with recommendations for placement, the division shall consider the recommendations of the committing court in placing a juvenile in a youth services facility or a community-based program.

(v) Upon receipt of an order of commitment, the division or its contracted provider or designee shall prepare a written treatment plan that:

(a) States the treatment plan for the juvenile, including the types of programs and services that will be provided to the juvenile;

(b) States the anticipated length of the juvenile's commitment;

(c)(1) States recommendations as to the most appropriate post-commitment placement for the juvenile.

(2) If the juvenile cannot return to the custody of his or her parent, guardian, or custodian because of child maltreatment, which includes the parent, guardian, or custodian refusing to take responsibility for the juvenile, the division shall immediately contact the Office of Chief Counsel of the Department of Human Services.

(3) The Office of Chief Counsel shall petition the committing court to determine the issue of custody of the juvenile;

(d) States any postcommitment community-based services that will be offered to the juvenile and to his or her family by the division or the community-based provider;

(e)(1) Outlines an aftercare plan, if recommended, including specific terms and conditions required of the juvenile and the community-based provider.

(2) If the juvenile progresses in treatment and an aftercare plan is no longer recommended or the terms of the aftercare plan need to be amended as a result of treatment changes, any change in the terms of the aftercare plan and conditions shall be provided in writing and shall be explained to the juvenile.

(3) The terms and conditions shall be provided also to the prosecuting attorney, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian by the division or its designee before the juvenile's release from the division.

(4) All aftercare terms shall be provided to the committing court; and

(f)(1) The treatment plan shall be filed with the committing court no later than thirty (30) days from the date of the commitment order or before the juvenile's release, whichever is sooner.

(2) A copy of the written treatment plan shall be provided and shall be explained to the juvenile.

(3) A copy shall be provided to the prosecutor, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian and shall be filed in the court files of any circuit court where a dependency-neglect or family in need of services case concerning that juvenile is pending.

(C) This transfer of custody shall not include placement of adjudicated delinquents into the custody of the department for the purpose of foster care except as under the Child Maltreatment Act, § 12-18-101 et seq.;

(2) Order the juvenile or members of the juvenile's family to submit to physical, psychiatric, or psychological evaluations;

(3) Grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court and that no further services or periodic reviews are required;

(4)(A) Place the juvenile on probation under those conditions and limitations that the court may prescribe pursuant to § 9-27-339(a).

(B)(i) In addition, the court shall have the right as a term of probation to require the juvenile to attend school or make satisfactory progress toward a general educational development certificate.

(ii) The court shall have the right to revoke probation if the juvenile fails to regularly attend school or if satisfactory progress toward a general educational development certificate is not being made;

(5) Order a probation fee, not to exceed twenty dollars (\$20.00) per month, as provided in § 16-13-326(a);

(6) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile, his or her parent, both parents, or his or her guardian;

(7)(A) Order restitution to be paid by the juvenile, a parent, both parents, the guardian, or his or her custodian.

(B) If the custodian is the State of Arkansas, both liability and the amount that may be assessed shall be determined by the Arkansas State Claims Commission;

(8) Order a fine of not more than five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, or the guardian;

(9) Order that the juvenile and his or her parent, both parents, or the guardian perform court-approved volunteer service in the community designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile, not to exceed one hundred sixty (160) hours;

(10)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-approved parental responsibility training program if available.

(B) The court may make reasonable orders requiring proof of completion of the training program within a certain time period and payment of a fee covering the cost of the training program.

(C) The court may provide that any violation of such orders shall subject the parent, both parents, or the guardian to the contempt sanctions of the court;

(11)(A)(i) Order that the juvenile remain in a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

(ii) The court may further order that the juvenile be eligible for work release or to attend school or other educational or vocational training.

(B) The juvenile detention facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents;

(12) Place the juvenile on residential detention with electronic monitoring, either in the juvenile's home or in another facility as ordered by the court;

(13)(A) Order the parent, both parents, or the guardian of any juvenile adjudicated delinquent and committed to a youth services center, detained in a juvenile detention facility, or placed on electronic monitoring to be liable for the cost of the commitment, detention, or electronic monitoring.

(B)(i) The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for the commitment, detention, or electronic monitoring.

(ii) The court shall take into account the past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.

(iii) If the parent is a noncustodial parent, the court shall take into account the opportunity the parent has had to correct the delinquent juvenile's conduct.

(iv) The court shall take into account any other factors the court deems relevant;

(14) When a juvenile is committed to a youth services center or detained in a juvenile detention facility and the juvenile is covered by private health insurance, order the parent or guardian to provide information on the juvenile's health insurance coverage, including a copy of the health insurance policy and the pharmacy card when available, to the juvenile detention center or youth services center that has physical custody of the juvenile; or

(15)(A) Order the Department of Finance and Administration to suspend the driving privileges of any juvenile adjudicated delinquent.

(B) The order shall be prepared and transmitted to the Department of Finance and Administration within twenty-four (24) hours after the juvenile has been found delinquent and is sentenced to have his or her driving privileges suspended.

(C) The court may provide in the order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school or for other circumstances.

(b) The court shall specifically retain jurisdiction to amend or modify any orders entered pursuant to this section.



(c)(1) If a juvenile is adjudicated delinquent for possession of a handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as provided in § 5-73-104, or possession of a defaced firearm, as provided in § 5-73-107, then the court shall commit the juvenile:

(A) To a juvenile detention facility, as provided in subdivision (a)(11) of this section;

(B) To a youth services center operated by the Department of Human Services State Institutional System Board, as provided in subdivision (a)(1) of this section; or

(C) Place the juvenile on residential detention, as provided in subdivision (a)(12) of this section.

(2) The court may take into consideration any preadjudication detention period served by the juvenile and sentence the juvenile to time served.

(d)(1) When the court orders restitution pursuant to subdivision (a)(7) of this section, the court shall consider the following:

(A) The amount of restitution may be decided:

(i) If the juvenile is to be responsible for the restitution, by agreement between the juvenile and the victim;

(ii) If the parent or parents are to be responsible for the restitution, by agreement between the parent or parents and the victim;

(iii) If the juvenile and the parent or parents are to be responsible for the restitution, by agreement between the juvenile, his or her parent or parents, and the victim; or

(iv) At a hearing at which the state must prove the restitution amount by a preponderance of the evidence;

(B) Restitution shall be made immediately unless the court determines that the parties should be given a specified time to pay or should be allowed to pay in specified installments;

(C)(i) In determining if restitution should be paid and by whom, as well as the method and amount of payment, the court shall take into account:

(a) The financial resources of the juvenile, his or her parent, both parents, or the guardian and the burden the payment will impose with regard to the other obligations of the paying party;

(b) The ability to pay restitution on an installment basis or on other conditions to be fixed by the court;

(c) The rehabilitative effect of the payment of restitution and the method of payment; and

(d) The past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.

(ii)(a) The court shall take into account whether the parent is a noncustodial parent.

(b) The court may take into consideration the opportunity the parent has had to correct the delinquent juvenile's conduct.

(iii) The court shall take into account any other factors the court deems relevant.

(2) If the juvenile is placed on probation, any restitution ordered under this section may be a condition of the probation.

(e) When an order of restitution is entered, it may be collected by any means authorized for the enforcement of money judgments in civil actions, and it shall constitute a lien on the real and personal property of the persons and entities the order of restitution is directed upon in the same manner and to the same extent as a money judgment in a civil action.

(f)(1) The judgment entered by the court may be in favor of the state, the victim, or any other appropriate beneficiary.

(2) The judgment may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment.

(g) The court shall determine priority among multiple beneficiaries on the basis of the seriousness of the harm each suffered, their other resources, and other equitable factors.

(h) If more than one (1) juvenile is adjudicated delinquent of an offense for which there is a judgment under this section, the juveniles are jointly and severally liable for the judgment, unless the court determines otherwise.

(i)(1) A judgment under this section does not bar a remedy available in a civil action under other law.

(2) A payment under this section must be credited against a money judgment obtained by the beneficiary of the payment in a civil action.

(3) A determination under this section and the fact that payment was or was not ordered or made are not admissible in evidence in a civil action and do not affect the merits of the civil action.

(j) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter the following dispositions:

(1) Order any of the juvenile delinquency dispositions authorized by this section; and

(2) Suspend the imposition of an adult sentence pending court review.

**History.** Acts 1989, No. 273, § 29; 1991, No. 763, § 1; 1993, No. 1227, § 4; 1994 (2nd Ex. Sess.), No. 61, § 1; 1994 (2nd Ex. Sess.), No. 62, § 1; 1995, No. 533, § 9; 1995, No. 779, § 1; 1995, No. 798, § 1; 1995, No. 1261, § 14; 1995, No. 1335, § 1; 1995, No. 1337, § 5; 1997, No. 1118, § 3; 1999, No. 1192, § 19; 1999, No. 1340, §§ 15, 16; 2003, No. 1166, § 16; 2003, No. 1319, § 17; 2003, No. 1809, § 6; 2005, No. 1990, § 9; 2007, No. 587, § 16; 2009, No. 758, § 14; 2009, No. 956, § 12.

**A.C.R.C. Notes.** The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2005 amendment inserted “or the prosecuting attorney in the county in which the juvenile was committed” in (a)(1)(B)(v)(b) and (c).

The 2007 amendment inserted “Judges” in (a)(1)(B)(ii); inserted present (a)(14); and redesignated former (a)(14) as (a)(15).

The 2009 amendment by No. 758 substituted “under the Child Maltreatment Act, § 12-18-101 et seq.” for “in § 12-12-516” in (a)(1)(C).

The 2009 amendment by No. 956 substituted “the Division of Youth Services of the Department of Human Services” for “a youth services center” in (a)(1)(B)(i); inserted (a)(1)(B)(iii)(b), redesignated the existing text of (a)(1)(B)(iii) accordingly, and inserted “treatment program or” in (a)(1)(B)(iii)(a); substituted “juvenile” for “youth” in (a)(1)(B)(iv); rewrote (a)(1)(B)(v); and made minor stylistic changes.

**Cross References.** Graduated com-

munity-based sanctions for delinquent juveniles, § 9-28-701 et seq.

Mandated release of personal information concerning certain juvenile escapees, § 9-28-215.

Reimbursement for educational services provided in juvenile detention facilities, § 6-20-104.

**Effective Dates.** Acts 2009, No. 758,

§ 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

## CASE NOTES

### ANALYSIS

Commitment.  
Department of Human Services.  
Probation Fee.  
Protective Supervision.

#### **Commitment.**

Chancellor lacked authority to order commitment of a juvenile offender to a serious offender program within the youth services center. *Arkansas Dep't of Human Servs. v. State*, 319 Ark. 749, 894 S.W.2d 592 (1995).

#### **Department of Human Services.**

Department of Human Services is a custodian for purposes of this section and § 9-27-331. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

Although no one has filed a lawsuit against the Department of Human Services seeking costs and restitution, but the court has imposed, under statutory authority, costs and restitutionary awards against the state agency in connection with delinquency proceedings in which the agency acted as a custodian of a juvenile, because the State will no doubt be coerced to bear the financial obligation to pay costs and restitution if the orders are upheld, the suit is one against the State for the purpose of determining whether sovereign immunity applies. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

The appearance of the Department of Human Services (DHS) subsequent to

complaints being filed against juveniles, pursuant to DHS's obligation to obtain custody of the juveniles in dependency-neglect proceedings and appear in delinquency proceedings, is not a voluntary waiver of sovereign immunity, because DHS is under an obligation to appear. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

#### **Probation Fee.**

The trial court cannot assess a probation fee against a custodian under this section or § 9-27-331, since this section does not authorize the assessment of a probation fee against a custodian, and a juvenile court's authority to assess a probation fee is based upon § 16-13-326(a), which is silent on assessing a probation fee against a custodian. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

#### **Protective Supervision.**

Under factual allegations of petition, there was no basis for construing the term "protective supervision" in former statute as requiring only the administration of a state agency. *Woodruff v. Shockey*, 297 Ark. 595, 764 S.W.2d 431 (1989) (decision under prior law).

**Cited:** *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993); *Allstate Ins. Co. v. Burrough*, 120 F.3d 834 (8th Cir. 1997); *B.J. v. State*, 56 Ark. App. 35, 937 S.W.2d 675 (1997); *McGill v. State*, 60 Ark. App. 246, 962 S.W.2d 382 (1998); *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

## **9-27-331. Disposition — Delinquency — Limitations.**

(a)(1) A commitment to the Division of Youth Services of the Department of Human Services is for an indeterminate period not to exceed the juvenile's twenty-first birthday, except as otherwise provided by law.



(2) An order of commitment shall remain in effect for an indeterminate period not exceeding two (2) years from the date entered.

(3) Before the expiration of an order of commitment, the circuit court may extend the order for additional periods of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(4) The committing court may at any time recommend that a juvenile be released from the custody of the division by making a written request for release stating the reasons release is in the best interests of the juvenile and society.

(5) The length of stay and the final decision to release shall be the exclusive responsibility of the division, except when the juvenile is an extended juvenile jurisdiction offender.

(b)(1)(A) Subsection (a) of this section does not apply to extended juvenile jurisdiction offenders.

(B) The circuit court shall have sole release authority when an extended juvenile jurisdiction offender is committed to the division.

(2)(A) Upon a determination that the juvenile has been rehabilitated, the division may petition the court for release.

(B) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

(i) The experience and character of the juvenile before and after the juvenile's disposition, including compliance with the court's orders;

(ii) The nature of the offense or offenses and the manner in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(3) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

(c)(1) Unless otherwise stated, and excluding extended juvenile jurisdiction offenders, an order of probation shall remain in effect for an indeterminate period not exceeding two (2) years.

(2) A juvenile shall be released from probation upon:

(A) Expiration of the order; or

(B) A finding by the court that the purpose of the order has been achieved.

(3) Prior to the expiration of an order of probation, the court may extend the order for an additional period of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(d)(1)(A) The court may enter an order for physical, psychiatric, or psychological evaluation or counseling or treatment affecting the

family of a juvenile only after finding that the evaluation, counseling, or treatment of family members is necessary for the treatment or rehabilitation of the juvenile.

(B) Subdivision (d)(1)(A) of this section shall not apply to the parental responsibility training programs in § 9-27-330(a)(10).

(2) For purposes of this section, if the Department of Human Services will be the payor, excluding the community-based providers, the court shall not specify a particular provider for family services.

(e)(1) An order of restitution, not to exceed ten thousand dollars (\$10,000) per victim, to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian may be entered only after proof by a preponderance of the evidence that specific damages were caused by the juvenile and that the juvenile's actions were the proximate cause of the damage.

(2)(A) If the amount of restitution determined by the court exceeds ten thousand dollars (\$10,000) for any individual victim, the court shall enter a restitution order for ten thousand dollars (\$10,000) in favor of the victim.

(B) Nothing in this section shall prevent a person or entity from seeking recovery for damages in excess of ten thousand dollars (\$10,000) available under other law.

(f) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(g)(1) If the juvenile who has been adjudicated delinquent is also in the custody of the department pursuant to a family in need of services or dependency-neglect petition and the court does not commit the juvenile to the division or order the juvenile to detention, C-Step, or a facility exclusively for delinquents, then any issues regarding placement of the juvenile shall be addressed only in the family in need of services or dependency-neglect case and shall not be an issue addressed, nor shall any orders be entered in the delinquency case regarding placement of the juvenile.

(2) Within ten (10) days of the entry of any order in the delinquency case, the prosecuting attorney shall file a copy of the order in the juvenile's dependency-neglect case.

(h) Custody of a juvenile shall not be transferred to the department if a delinquency petition or case is converted to a family in need of services petition or case.

(i) No court may commit to the division a juvenile found solely in criminal contempt.

**History.** Acts 1989, No. 273, § 30; 1991, No. 763, § 2; 1994 (2nd Ex. Sess.), No. 61, § 2; 1994 (2nd Ex. Sess.), No. 62, § 2; 1995, No. 779, § 2; 1995, No. 1261, § 15; 1999, No. 1192, § 20; 1999, No. 1340, §§ 17-19; 2003, No. 1166, § 17; 2003, No. 1319, § 18; 2003, No. 1473, § 17; 2003, No. 1809, §§ 7, 8; 2005, No. 1990, §§ 10, 11; 2009, No. 956, § 13.

**A.C.R.C. Notes.** Ark. Const., Amend.

80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2005 amendment,

in (h), substituted "home study" for "full investigation" and inserted "or a licensed certified social worker"; and added (k).

The 2009 amendment repealed former (f) and (g).

**Cross References.** Graduated community-based sanctions for delinquent juveniles, § 9-28-701 et seq.

## CASE NOTES

### ANALYSIS

Constitutionality.

Purpose.

Commitment to Youth Services.

Continuing Jurisdiction.

Probation Fee.

### Constitutionality.

Application to juvenile of the 1994 amendment of subsection (d) of this section, increasing the burden of the punishment imposed on juveniles from \$2,000 to \$10,000, constituted a violation of the ex post facto clause where amendment became effective subsequent to juvenile's offense. *Eichelberger v. State*, 323 Ark. 551, 916 S.W.2d 109 (1996).

### Purpose.

If the legislature had intended the ceiling to apply to a multiplicity of crimes it would have referred to "losses," rather than "the loss." *Leach v. State*, 307 Ark. 201, 819 S.W.2d 1 (1991).

### Commitment to Youth Services.

Where defendant was sixteen at the time of the offense was committed, but would have reached the age of eighteen by the time he was convicted, he could not then have been committed to a youth services center on conviction, and therefore a transfer of his case to juvenile court was unwarranted. *Sims v. State*, 320 Ark. 528, 900 S.W.2d 508 (1995), overruled, *MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998).

### Continuing Jurisdiction.

Defendant juvenile, relying on § 5-4-307, asserted that the trial court lacked jurisdiction to revoke his suspended sentence where the revocation petition was filed and heard outside the period of suspension, however, defendant's reliance on criminal code provisions was misplaced because subdivision (c)(1) of this section provided that an order of probation would remain in effect for an indeterminate period not to exceed two years, defendant had not been released from probation, and the trial court had jurisdiction to revoke defendant's probation pursuant to § 9-27-339. *Byrd v. State*, 84 Ark. App. 203, 138 S.W.3d 109 (2003).

### Probation Fee.

The trial court cannot assess a probation fee against a custodian under § 9-27-330 or this section, since § 9-27-330 does not authorize the assessment of a probation fee, and a juvenile court's authority to assess a probation fee is based on § 16-13-326(a), which is silent on assessing a probation fee against a custodian. *Arkansas Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

**Cited:** *Bright v. State*, 307 Ark. 250, 819 S.W.2d 7 (1991); *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *Myers v. State*, 317 Ark. 70, 876 S.W.2d 246 (1994); *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996); *Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997); *Majesty v. State*, 330 Ark. 416, 954 S.W.2d 245 (1997).

## 9-27-332. Disposition — Family in need of services — Generally.

(a) If a family is found to be in need of services, the circuit court may enter an order making any of the following dispositions:

(1)(A) To order family services to rehabilitate the juvenile and his or her family.



(B)(i) If the Department of Human Services is the provider for family services, the family services shall be limited to those services available by the department's community-based providers or contractors, excluding the contractors with the Division of Children and Family Services of the Department of Human Services and services of the department for which the family applies and is determined eligible.

(ii) To prevent removal when the department is the provider for family services, the court shall make written findings outlining how each service is intended to prevent removal;

(2)(A) If it is in the best interest of the juvenile, transfer custody of juvenile family members to another licensed agency responsible for the care of juveniles or to a relative or other individual.

(B) If it is in the best interest of the juvenile and because of acts or omissions by the parent, guardian, or custodian, removal is necessary to protect the juvenile's health and safety, transfer custody to the department.

(C) All juveniles in shelters or awaiting foster care placement who are in the custody of the department are "homeless children and youth" as defined under 42 U.S.C. § 11434a(2), as in effect on February 1, 2005;

(3)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available.

(B) The court may make reasonable orders requiring proof of completion of such a training program within a certain time period and payment of a fee covering the cost of the training program;

(4) Place the juvenile on residential detention with electronic monitoring in the juvenile's home;

(5) Order the juvenile, his or her parent, both parents, or guardian to perform court-approved volunteer service in the community designed to contribute to the rehabilitation of the juvenile or the ability of the parent or guardian to provide proper parental care and supervision of the juvenile, not to exceed one hundred sixty (160) hours;

(6)(A) Place the juvenile on supervision terms, including, but not limited to, requiring the juvenile to attend school or make satisfactory progress toward a general education development certificate, requiring the juvenile to observe a curfew, and prohibiting the juvenile from possessing or using any alcohol or illegal drugs.

(B) The supervision terms shall be in writing.

(C) The supervision terms shall be given to the juvenile and explained to the juvenile and to his or her parent, guardian, or custodian by the juvenile intake or probation officer in a conference immediately following the disposition hearing;

(7)(A) Order a fine not to exceed five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, a guardian, or a custodian when the juvenile exceeds the number of excessive unexcused absences provided in the student attendance policy of the district or the State Board of Career Education.

(B) The purpose of the penalty set forth in this section is to impress upon the parents, guardians, or persons in loco parentis the importance of school or adult education attendance, and the penalty is not to be used primarily as a source of revenue.

(C)(i) In all cases in which a fine is ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay for the fine.

(ii) In making its determination, the court shall consider the following factors:

(a) The financial ability of the parent, both parents, the guardian, or the custodian to pay for such services;

(b) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(c) Any other factors that the court deems relevant.

(D) When practicable and appropriate, the court may utilize mandatory attendance to such programs as well as community service requirements in lieu of a fine;

(8) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian; and

(9) Order a juvenile service fee not to exceed twenty dollars (\$20.00) a month to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian.

(b) The court may provide that any violation of its orders shall subject the parent, both parents, the juvenile, custodian, or guardian to contempt sanctions.

**History.** Acts 1989, No. 273, § 31; 1995, No. 533, § 10; 1995, No. 779, § 3; 1995, No. 1335, § 2; 1995, No. 1337, § 6; 1997, No. 1118, § 4; 1999, No. 401, § 9; 1999, No. 1340, § 20; 2001, No. 1503, § 9; 2003, No. 1319, §§ 19, 20; 2003, No. 1809, § 9; 2005, No. 1990, § 12; 2007, No. 587, § 17.

**Amendments.** The 2005 amendment inserted (a)(2)(C)-(E).

The 2007 amendment deleted former (a)(2)(D), (a)(2)(E) and (a)(3) and redesignated the remaining subsections accordingly.

## CASE NOTES

**Cited:** Johnson v. State, 319 Ark. 3, 888 S.W.2d 661 (1994).

### 9-27-333. Disposition — Family in need of services — Limitations.

(a) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services, the circuit court shall fax a written notice of intent to the Director of the Department of Human Services and to the attorney of the local office of chief counsel of the Department of Human Services.

(b) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(c) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(d) For purposes of this section, the court shall not specify a particular provider for placement or family services when the department is the payor or provider.

(e)(1) In all cases in which family services are ordered, the court shall determine a parent's, guardian's, or custodian's ability to pay, in whole or in part, for these services.

(2) This determination and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian can pay for the family services ordered and ordering the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(4) For purposes of this subsection:

(A) "Parent, guardian, and custodian" means the individual or individuals from whom custody was removed; and

(B) "Periodically" means no more than one (1) time per month.

(5) In making its determination, the court shall consider the following factors:

(A) The financial ability of the parent, both parents, the guardian, or the custodian to pay for the services;

(B) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(C) Any other factors the court deems relevant.

(f) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(g) Custody of a juvenile shall not be transferred to the department if a delinquency petition or case is converted to a family in need of services petition or case.

(h) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Human Services.

(i) For purposes of this section, the court shall not order the department to expend or forward social security benefits for which the department is payee.



**History.** Acts 1989, No. 273, § 32; 1997, No. 1227, § 9; 2003, No. 1319, § 27; 2003, No. 1809, § 10; 2005, No. 1990, §§ 13, 14; 2007, No. 587, § 18; 2009, No. 956, § 14.

**Amendments.** The 2005 amendment, in (f), substituted “home study” for “full investigation” and inserted “or a licensed certified social worker”; and added (h).

The 2007 amendment, in (f), substituted “Department of Health and Human Services” for “department,” deleted “certified” following “license,” and inserted “who is approved to do home studies.”

The 2009 amendment added (i).

## 9-27-334. Disposition — Dependent-neglected — Generally.

(a) If a juvenile is found to be dependent-neglected, the circuit court may enter an order making any of the following dispositions:

(1) Order family services;

(2)(A) If it is in the best interest of the juvenile, transfer custody of the juvenile to the Department of Human Services, to another licensed agency responsible for the care of juveniles, or to a relative or other individual.

(B) If the court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined at § 9-28-402(12).

(C) All juveniles in shelters or awaiting foster care placement who are in the custody of the department are “homeless children and youth” as defined at 42 U.S.C. § 11434a(2), as in effect on February 1, 2005;

(3)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available, and participate in a juvenile drug court program.

(B) The court may make reasonable orders requiring proof of completion of such a training program within a certain time period and payment of a fee covering the cost of the training program.

(b) Such an order of custody shall supersede an existing court order of custody and shall remain in full force and effect until a subsequent order of custody is entered by a court of competent jurisdiction.

(c) The court may provide that any violation of its orders shall subject the parent, both parents, the juvenile, the custodian, or the guardian to contempt sanctions.

**History.** Acts 1989, No. 273, § 33; 1993, No. 1227, § 2; 1995, No. 533, § 11; 1995, No. 779, § 4; 1995, No. 1335, § 3; 1995, No. 1337, § 7; 1999, No. 401, § 10; 1999, No. 1340, § 21; 2001, No. 1503, § 10; 2003, No. 1319, § 21; 2003, No. 1809, § 11; 2005, No. 1990, § 15; 2007, No. 587, § 19; 2007, No. 1022, § 2.

**Amendments.** The 2005 amendment

added (a)(2)(C)-(E); and inserted “the juvenile” in (c).

The 2007 amendment by No. 587 deleted (a)(2)(D), (E) and (a)(3) and redesignated the remaining subsection accordingly.

The 2007 amendment by No. 1022 inserted (a)(4)(A)(ii) and made related changes.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Civil Rights, 11 U. Ark. Little Rock L.J. 149.

## CASE NOTES

## ANALYSIS

Adoption Subsidies.

Attorney's Fees.

Jurisdiction to Award Custody.

**Adoption Subsidies.**

Administrative law judge erred in finding that children were not in the state's custody for adoption subsidy purposes because, although the children were in their aunt's physical custody, the state maintained a supervisory role over the children through the context of the protective-services case that remained open on the children until their parents' rights were terminated. *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

**Attorney's Fees.**

Order requiring the Arkansas Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld pursuant to sub-

division (a)(1) of this section; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child's adoption. *Ark. HHS v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

**Jurisdiction to Award Custody.**

From the language in this section it is clear that the juvenile court had the power to award custody of a child to the noncustodial parent once the Department of Human Services initiated dependency-neglect proceedings; in 1993, the General Assembly made it clear that a juvenile court's custody order supersedes any existing court order and remain in effect until subsequent custody order is entered by a court of competent jurisdiction. *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

**Cited:** *Woodruff v. Shockey*, 297 Ark. 595, 764 S.W.2d 431 (1989).

**9-27-335. Disposition — Dependent-neglected — Limitations.**

(a)(1) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services in any case in which the department is not a party, the circuit court shall fax a written notice of intent to the Director of the Department of Human Services and to the attorney of the local office of chief counsel of the department.

(2) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(3) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(b) For purposes of this section, the court shall not specify a particular provider for placement or family services if the department is the payor or provider.

(c)(1) In all cases in which family services are ordered, the court shall determine the ability of the parent, guardian, or custodian to pay, in whole or in part, for these services.

(2) The determination of ability to pay and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or in part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian is able to pay for the family services ordered and order the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(d) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or by a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(e)(1)(A) The court shall enter an order transferring custody of a juvenile in a dependency-neglect case only after determining that reasonable efforts have been made by the department to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.

(B) The juvenile's health and safety shall be the paramount concern of the court in determining if the department could have made reasonable efforts to prevent the juvenile's removal.

(2) If the court finds that reasonable efforts to deliver family services could have been made with the juvenile safely remaining at home but were not made, the court may:

(A) Dismiss the petition;

(B) Order family services reasonably calculated to prevent the need for out-of-home placement; or

(C) Transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement if the transfer is necessary:

(i) To protect the juvenile's health and safety; or

(ii) To prevent the removal of the juvenile from the jurisdiction of the court.

(f) In a case of medical neglect involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) Preventing or remedying serious harm to the child; or

(2) Preventing the withholding of medically indicated treatment from a child with a life-threatening condition.

(g) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Human Services.

(h) For purposes of this section, the court shall not order the department to expend or forward social security benefits for which the department is payee.

**History.** Acts 1989, No. 273, § 34; 2003, No. 1809, § 12; 2005, No. 1990, 1997, No. 1227, § 10; 1999, No. 401, § 11; § 16; 2009, No. 956, §§ 15, 16.  
1999, No. 1363, § 2; 2003, No. 1319, § 28; **Amendments.** The 2005 amendment



added (g); and, in (d), substituted "home study" for "full investigation" and inserted "or a licensed certified social worker."

The 2009 amendment substituted "or by a licensed social worker who is approved

to do home studies" for "or a licensed certified social worker" in (d); and added (h).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Civil Rights, 11 U. Ark. Little Rock L.J. 149.

## CASE NOTES

### Social Worker.

In a case involving custody of an Oklahoma child who was left unattended by his mother in Arkansas, the issue of whether a social worker was qualified to

conduct a home study was waived where no objection was made before a trial court. *Arkansas HHS v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

### 9-27-336. Limitations on detention.

(a) A juvenile who is alleged to be or who has been adjudicated either dependent-neglected or a member of a family in need of services shall not be placed or detained in a secure detention facility, in a facility utilized for the detention of alleged or adjudicated delinquent juveniles, or in a facility utilized for the detention of adults held for, charged with, or convicted of a crime except:

(1)(A) A juvenile may be held in a juvenile detention facility when he or she has been away from home for more than twenty-four (24) hours and when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or out of state.

(B)(i) The juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(C)(i) A juvenile held under this subdivision (a)(1) shall be separated from detained juveniles charged or held for delinquency.

(ii) A juvenile may not be held under this subdivision (a)(1) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; and

(2)(A) An adjudicated family in need of services juvenile may be held in a juvenile detention facility when the court finds that the juvenile violated a valid court order.

(B)(i) For the purposes of this subdivision (a)(2), a valid court order shall include any order of a circuit court regarding a juvenile who has been brought before the court and made subject to a court order.

(ii) The juvenile who is the subject of the order shall receive full due process rights.

(C)(i) A juvenile held under this subdivision (a)(2) shall be separated from detained juveniles charged or held for delinquency.

(ii) The holding shall not occur in any facility utilized for incarceration of adults.

(b) A juvenile shall not be placed or confined in a jail or lock-up used for the detention of adults except under the following circumstances:

(1) A juvenile who has been formally transferred from the juvenile division of circuit court to the criminal division of circuit court and against whom felony charges have been filed or a juvenile whom the prosecuting attorney has the discretion to charge in circuit court and to prosecute as an adult and against whom the circuit court's jurisdiction has been invoked by the filing of felony charges may be held in an adult jail or lock-up;

(2)(A) A juvenile alleged to have committed a delinquent act may be held in an adult jail or lock-up for up to six (6) hours for purposes of identification, processing, or arranging for release or transfer to an alternative facility, provided that he or she is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B) A holding for those purposes shall be limited to the minimum time necessary and shall not include travel time for transporting the juvenile to the alternative facility; or

(3)(A) A juvenile alleged to have committed a delinquent act who is awaiting an initial appearance before a judge may be held in an adult jail or lock-up for up to twenty-four (24) hours, excluding weekends and holidays, provided the following conditions exist:

(i) The alleged act would be a misdemeanor or a felony if committed by an adult or is a violation of § 5-73-119;

(ii) The geographical area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the current designation of the United States Census Bureau;

(iii) No acceptable alternative placement for the juvenile exists; and

(iv) The juvenile is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B)(i) A juvenile awaiting an initial appearance and being held in an adult jail or lock-up pursuant to the twenty-four-hour exception, as provided in subdivision (b)(3)(A) of this section, may be held for an additional period not to exceed twenty-four (24) hours, provided that the following conditions exist:

(a) The conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within twenty-four (24) hours; and

(b) All the conditions in subdivision (b)(3)(A) of this section exist.

(ii) Criteria will be adopted by the Governor or his or her designee to establish what distance, highway or road conditions, or ground transportation limitations will provide a basis for holding a juvenile in an adult jail or lock-up under this exception.

(c) Provided that the facilities are designed and used in accordance with federal and state guidelines and restrictions, nothing in this subchapter is intended to prohibit the use of juvenile detention facilities that are attached to or adjacent to adult jails or lock-ups.

(d) A detention facility shall not release a serious offender for a less serious offender except by order of the judge who committed the more serious offender.

**History.** Acts 1989, No. 273, § 35; 1989 (3rd Ex. Sess.), No. 76, § 1; 1994 (2nd Ex. Sess.), No. 55, § 3; 1994 (2nd Ex. Sess.), No. 56, § 3; 1997, No. 1118, § 5; 2003, No. 1166, § 18; 2005, No. 1962, § 20.

**Amendments.** The 2005 amendment

deleted "Except pursuant to subsection (e) of this section" at the beginning of (b); and, in (c), deleted "Except as provided in subsection (e) of this section" and made a stylistic change.

## CASE NOTES

### **Detention Order Invalid.**

Where a juvenile was deprived of his right to counsel during a contempt proceeding because the juvenile only had the services of an attorney ad litem and not a defense attorney, the juvenile's due process rights were violated, the court's or-

ders were invalid and, under subdivisions (a)(2)(A) and (B) of this section, the trial court, not having issued a valid order, could not order the juvenile to be detained at the juvenile detention facility. *Ark. Dep't of Human Servs. v. Mainard*, 358 Ark. 204, 188 S.W.3d 901 (2004).

### **9-27-337. Six-month reviews required.**

(a)(1) The court shall review every case of dependency-neglect or families in need of services when:

(A) A juvenile is placed by the court in the custody of the Department of Human Services or in another out-of-home placement until there is a permanent order of custody, guardianship, or other permanent placement for the juvenile; or

(B) A juvenile is returned to the parent, guardian, or custodian and the court has not discontinued orders for family services.

(2)(A) The first six-month review shall be held no later than six (6) months from the date of the original out-of-home placement of the child.

(B) It shall be reviewed every six (6) months thereafter until permanency is achieved.

(b)(1) The court may require these cases to be reviewed prior to the sixth month.

(2)(A) If a court requires a case to be reviewed prior to the sixth month, the court shall announce the date, time, and place of hearing.

(B) In all other cases, it shall be the duty of the petitioner at least sixty (60) days prior to date the date of the required six-month review to request that the court:

(i) Set the review hearing;

(ii) Provide reasonable notices; and

(iii) Serve notice on all parties in accordance with the Arkansas Rules of Civil Procedure.



(c) At any time during the pendency of any case of dependency-neglect or families in need of services in which an out-of-home placement has occurred, any party may request the court to review the case.

(d) At any time during the course of a case, the department, the attorney ad litem, or the court can request a hearing on whether or not reunification services should be terminated pursuant to § 9-27-327(a)(2).

(e)(1)(A) In each case in which a juvenile has been placed in an out-of-home placement, the court shall conduct a hearing to review the case sufficiently to determine the future status of the juvenile based upon the best interest of the juvenile.

(B)(i) The court shall determine and shall include in its orders the following:

(a) Whether the case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;

(b) Whether the state has made reasonable efforts to provide family services;

(c) Whether the case plan is moving towards an appropriate permanency plan pursuant to § 9-27-338 for the juvenile; and

(d) Whether the visitation plan is appropriate for the juvenile, the parent or parents, and any siblings, if separated.

(ii)(a) The court may order any studies, evaluations, or post-disposition reports, if needed.

(b) All studies, evaluations, or post-disposition reports shall be provided in writing to all parties and counsel at least two (2) days prior to the review hearing.

(c) All parties shall be given a fair opportunity to controvert any part of a study, evaluation, or post-disposition report.

(C) In making its findings, the court shall consider the following:

(i) The extent of compliance with the case plan, including, but not limited to, a review of the department's care for the health, safety, and education of the juvenile while he or she has been in an out-of-home placement;

(ii) The extent of progress that has been made toward alleviating or mitigating the causes of the out-of-home placement;

(iii) Whether the juvenile should be returned to his or her parent or parents and whether or not the juvenile's health and safety can be protected by his or her parent or parents if returned home; and

(iv) An appropriate permanency plan pursuant to § 9-27-338 for the juvenile, including concurrent planning.

(2) Each six-month review hearing shall be completed and a written order shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

**History.** Acts 1989, No. 273, § 36; 1995, No. 404, § 1; 1995, No. 533, § 12; 1995, No. 1337, § 8; 1997, No. 1227, § 11; 1999, No. 401, § 12; 2001, No. 987, § 5; 2001, No. 1503, § 11; 2005, No. 1191, § 3; 2005, No. 1990, § 17; 2007, No. 587, § 20.

**Amendments.** The 2005 amendment by No. 1191 rewrote this section.

The 2005 amendment by No. 1990 added (e)(1)(B)(ii)(a)-(c).

The 2007 amendment inserted "not" in (a)(1)(B).

## CASE NOTES

### ANALYSIS

Applicability.  
Attorney's Fees.

#### Applicability.

Once the juvenile court took jurisdiction of a matter as a dependent-neglect case, the Juvenile Code provisions became applicable; that being so, the juvenile court was obliged to provide for periodic reviews under this section and § 9-27-338. *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

There is no authority for a juvenile court to dismiss dependent-neglect proceedings when the parties all comply with the case plan and reasonable efforts are

being made by all concerned; periodic review should be continued, regardless of such compliance. *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

#### Attorney's Fees.

Order requiring the Arkansas Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld pursuant to subdivision (a)(1)(A) of this section; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child's adoption. *Ark. HHS v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

### 9-27-338. Permanency planning hearing.

(a)(1) A permanency planning hearing shall be held to finalize a permanency plan for the juvenile:

(A) Twelve (12) months after the date the juvenile enters an out-of-home placement;

(B) After a juvenile has been in an out-of-home placement for fifteen (15) of the previous twenty-two (22) months, excluding trial placements and time on runaway status; or

(C) No later than thirty (30) days after a hearing granting no reunification services.

(2) If a juvenile remains in an out-of-home placement after the initial permanency planning hearing, a permanency planning hearing shall be held annually to reassess the permanency plan selected for the juvenile.

(b)(1) This section does not prevent the Department of Human Services or the attorney ad litem from filing at any time prior to the permanency planning hearing a:

(A) Petition to terminate parental rights;

(B) Petition for guardianship; or

(C) Petition for permanent custody.

(2) A permanency planning hearing is not required prior to any of these actions.

(c) At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency

goals, listed in order of preference, in accordance with the best interest of the juvenile:

(1) Returning the juvenile to the parent, guardian, or custodian at the permanency planning hearing if it is in the best interest of the juvenile and the juvenile's health and safety can be adequately safeguarded if returned home;

(2) Authorizing a plan to return the juvenile to the parent, guardian, or custodian only if the court finds that:

(A)(i) The parent, guardian, or custodian is complying with the established case plan and orders of the court, making significant measurable progress toward achieving the goals established in the case plan and diligently working toward reunification.

(ii) A parent's, guardian's, or custodian's resumption of contact or overtures toward participating in the case plan or following the orders of the court in the months or weeks immediately preceding the permanency planning hearing are insufficient grounds for authorizing a plan to return home as the permanency plan.

(iii) The burden is on the parent, guardian, or custodian to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to authorize a plan to return home as the permanency goal;

(B) The parent, guardian, or custodian is making significant and measurable progress toward remedying the conditions that caused the juvenile's removal and the juvenile's continued removal from the home; and

(C) The return of the juvenile to the parent, guardian, or custodian shall occur within a time frame that is consistent with the juvenile's developmental needs but no later than three (3) months from the date of the permanency planning hearing;

(3) Authorizing a plan for adoption with the department filing a petition for termination of parental rights unless:

(A) The juvenile is being cared for by a relative, including a minor foster child caring for his or her own child who is in foster care, and termination of parental rights is not in the best interest of the juvenile;

(B) The department has documented in the case plan a compelling reason why filing such a petition is not in the best interest of the juvenile and the court approves the compelling reason as documented in the case plan; or

(C)(i) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, such services as the department deemed necessary for the safe return of the juvenile to the juvenile's home if reunification services were required to be made to the family.

(ii) If the department has failed to provide services as outlined in the case plan, the court shall schedule another permanency planning hearing for no later than six (6) months;

(4) Authorizing a plan to obtain a guardian for the juvenile;



(5) Authorizing a plan to obtain a permanent custodian, including permanent custody with a fit and willing relative; or

(6)(A) Authorizing a plan for another planned permanent living arrangement that shall include a permanent planned living arrangement and addresses the quality of services, including, but not limited to, independent living services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive.

(B) Another Planned Permanent Living Arrangement (APPLA) shall be selected only if the department has documented to the circuit court a compelling reason for determining that it would not be in the best interest of the child to follow one (1) of the permanency plans identified in subdivisions (c)(1)-(5) of this section.

(d) At every permanency planning hearing the court shall make a finding on whether the department has made reasonable efforts and shall describe the efforts to finalize a permanency plan for the juvenile.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(f) If the court determines that the permanency goal is adoption, the department shall file the petition to terminate parental rights within thirty (30) days from the date of the permanency planning hearing that establishes adoption as the permanency goal.

**History.** Acts 1989, No. 273, § 37; 1995, No. 1337, § 9; 1997, No. 1227, § 12; 1999, No. 401, § 13; 2001, No. 1503, § 12; 2003, No. 1319, § 22; 2005, No. 1191, § 4; 2009, No. 956, § 17.

**Amendments.** The 2005 amendment rewrote this section.

The 2009 amendment inserted (c)(2), deleted (c)(5), redesignated the remaining subdivisions accordingly; substituted "adoption with the department filing a

petition for termination of parental rights" for "the termination of the parent-child relationship so that the child is available to be adopted" in (c)(3); substituted "schedule another" for "continue the" in (c)(3)(C)(ii); inserted "fit and willing" in (c)(5); rewrote (c)(6)(B); substituted "adoption" for "termination of parental rights" in two places in (f); and made related and minor stylistic changes.

## CASE NOTES

### ANALYSIS

In General.  
Applicability.  
Construction With Other Law.  
Custody Award.  
Termination.

#### In General.

In a termination of parental rights case, the trial court is required to hold a permanency planning hearing no later than 12 months after the date the juvenile enters an out-of-home placement or no later than 30 days after the court files a no-reunifi-

cation order; this "or" disjunctive located in the language of the statute does not provide the court with merely one option as to when it can hold a permanency planning hearing, but rather, the "12 month" language provides the court the option to hold the hearing even before it has filed the no-reunification order. *Phillips v. Ark. Dep't of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004).

Order terminating mother's parental rights to her three children pursuant to § 9-27-341(a)(2) was upheld as the trial court did not err in placing the oldest child in the custody of a family friend; subsec-

tion (c) of this section clearly anticipated that one of the “goals” could be a plan for permanent custody. *Griffin v. Ark. Dep’t of Health and Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006).

#### **Applicability.**

Once the juvenile court took jurisdiction of a matter as a dependent-neglect case, the Juvenile Code provisions became applicable; that being so, the juvenile court was obliged to provide for periodic reviews under this section and § 9-27-337. *Nance v. Arkansas Dep’t of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

There is no authority for a juvenile court to dismiss dependent-neglect proceedings when the parties all comply with the case plan and reasonable efforts are being made by all concerned; periodic review should be continued, regardless of such compliance. *Nance v. Arkansas Dep’t of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).

Trial court erred in terminating a mother’s parental rights where clear and convincing evidence that such was in the best interest of her children was lacking and, instead, the evidence showed that the mother completed parenting classes, began rehabilitative services, obtained an appropriate home and transportation, addressed her medical problems, obtained employment, commenced counseling, and paid her lot rental payments in advance in an effort to achieve stability. *Trout v. Ark. Dep’t of Human Servs.*, 84 Ark. App. 446, 146 S.W.3d 895 (2004), rev’d, 359 Ark. 283, 197 S.W.3d 486 (2004).

Nothing in this section prohibited the trial court from holding a permanency planning hearing immediately, given that it had already provided notice of no reunification and the DHS’s petition to terminate; in addition, the trial court’s subsequent termination of the parents’ parental rights was not error when, under

§ 9-27-341, the fact that the parents had had their parental rights terminated as to their other children was an immediate ground for termination. *Phillips v. Ark. Dep’t of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004).

#### **Construction With Other Law.**

Section 9-27-341 provides that the court may only consider a termination of parental rights petition if there “is an appropriate permanency placement plan”; however, it must be read in harmony with this section, which mandates a permanency planning hearing. *Phillips v. Ark. Dep’t of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004).

#### **Custody Award.**

Where a mother made unsubstantiated sexual abuse allegations, a trial court did not err by awarding custody to a father in a family-in-need-of-services case under this section, because it was not in the child’s best interest to return to the mother where the child was doing better while not in her custody; moreover, the father did not have to show a material change in circumstances since this was not a regular custody proceeding. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007).

#### **Termination.**

Trial court did not err by following the statutory preference for the termination of parental rights under subsection (c) of this section, even though two children were being cared for by their grandmother, since it was not in the children’s best interest to return them to the father due to allegations of physical and sexual abuse. *Hall v. Ark. Dep’t of Human Servs.*, 101 Ark. App. 417, 278 S.W.3d 609 (2008).

**Cited:** *Arkansas Dep’t of Human Servs. v. Farris*, 309 Ark. 575, 832 S.W.2d 482 (1992); *Moore v. Arkansas Dep’t of Human Servs.*, 333 Ark. 288, 969 S.W.2d 186 (1998); *Larscheid v. Arkansas Dep’t of Human Servs.*, 343 Ark. 580, 36 S.W.3d 308 (2001).

### **9-27-339. Probation — Revocation.**

(a)(1) After an adjudication of delinquency, the court may place a juvenile on probation. The conditions of probation shall be given to the juvenile in writing and shall be explained to him or her and to his or her

parent, guardian, or custodian by the probation officer in the initial conference following the disposition hearing.

(2) The court shall notify the Division of Youth Services of the Department of Human Services in its commitment order of the order of probation including the juvenile's compliance with the division's after-care plan, if provided in the treatment plan.

(b) Any violation of a condition of probation may be reported to the prosecuting attorney, who may initiate a petition in the court for revocation of probation. A petition for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation.

(c) The petition alleging violation of a condition of probation and seeking revocation of probation shall be served upon the juvenile, his or her attorney, and his or her parent, guardian, or custodian.

(d) A revocation hearing shall be set within a reasonable time after the filing of the petition, or within fourteen (14) days if the juvenile has been detained as a result of the filing of the petition for revocation.

(e) If the court finds by a preponderance of the evidence that the juvenile violated the terms and conditions of probation, the court may:

(1) Extend probation;

(2) Impose additional conditions of probation; or

(3) Make any disposition that could have been made at the time probation was imposed under § 9-27-330.

(f)(1) Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment.

(2) In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(3) If the court determines that the default in payment of a fine, costs, or restitution is excusable under subdivision (f)(1) of this section, the court may enter an order allowing the juvenile additional time for payment, reducing the amount of each installment, or revoking the fine, costs, or restitution or unpaid portion thereof in whole or in part.

**History.** Acts 1989, No. 273, § 38; 1994 (2nd Ex. Sess.), No. 69, § 2; 1994 (2nd Ex. Sess.), No. 70, § 2; 2009, No. 956, §§ 18, 19.

**Amendments.** The 2009 amendment

inserted (a)(2) and redesignated the existing text of (a) accordingly; inserted "under § 9-27-330" in (e)(3) and deleted (e)(4); and made related and minor stylistic changes.



## CASE NOTES

## ANALYSIS

Double Jeopardy.

Evidence.

Notice.

Order of Court Improper.

Order of Court Proper.

Petition to Revoke Probation.

**Double Jeopardy.**

Double jeopardy attaches within the meaning of the Fifth Amendment (U.S. Const. Amend. 5), as applicable to the states under the Fourteenth Amendment (U.S. Const. Amend. 14), in an adjudicatory delinquency proceeding in juvenile court. *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

**Evidence.**

Court properly admitted juvenile's statements at a probation revocation proceeding to her probation officer regarding taking drugs because § 9-27-321 protected juveniles from Miranda violations in a pre-adjudication context, not at a revocation hearing; in addition, the statement was properly admitted because the statement was offered to prove that defendant had violated the terms of her probation. *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

**Notice.**

Where there has been a first disposition denying revocation of probation, this section requires the prosecutor to file another petition for revocation and give notice to the delinquent that revocation is again being considered before probation can be revoked. *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

**Order of Court Improper.**

Where at a probation hearing on December 12, 1991, a special judge found beyond a reasonable doubt that the juvenile had violated the terms of probation, but where the judge did not revoke probation and fine appellant as could have been done, but instead, extended probation for an additional year, and where in addition the judge signed form order styled "Order

to Appear," which had a checkmark in a box to notify appellant that the appellant was to appear on March 18, 1992, for "Review of compliance with Orders of this court," it was important for the trial court to revoke probation and fine the juvenile, when he appeared with counsel on March 18, 1992 pursuant to the "Order to Appear". *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

**Order of Court Proper.**

Court did not err in ordering both detention and inpatient drug treatment in juvenile's probation revocation order because the trial court did not amend its revocation order, but rather, entered an order of disposition on the revocation after finding that the juvenile violated the terms of her probation; at the time juvenile entered a plea of guilty, the trial court could have ordered detention and probation with the condition of receiving inpatient drug treatment. *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

**Petition to Revoke Probation.**

This section provides that after an adjudication of delinquency, the court may place a juvenile on probation; after a juvenile is placed on probation, the only method of revocation provided for is for the prosecuting attorney to file a petition to revoke probation. *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

Defendant juvenile, relying on § 5-4-307, asserted the trial court lacked jurisdiction to revoke defendant's suspended sentence where the revocation petition was filed and heard outside the period of suspension, however, defendant's reliance on criminal code provisions was misplaced because § 9-27-331(c)(1) provided that an order of probation would remain in effect for an indeterminate period not to exceed two years, defendant had not been released from probation, and the trial court had jurisdiction to revoke defendant's probation pursuant to this section. *Byrd v. State*, 84 Ark. App. 203, 138 S.W.3d 109 (2003).

**Cited:** *Eichelberger v. State*, 323 Ark. 551, 916 S.W.2d 109 (1996).

**9-27-340. [Repealed.]**

**Publisher's Notes.** This section, concerning voluntary relinquishment of custody, was repealed by Acts 2001, No. 1503, § 13. The section was derived from Acts 1985, No. 273, § 39. For present law, see §§ 9-27-353 and 9-34-201 et seq.

**9-27-341. Termination of parental rights.**

(a)(1)(A) This section shall be a remedy available only to the Department of Human Services or a court-appointed attorney ad litem.

(B) This section shall not be available for private litigants or other agencies.

(2) This section shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement.

(3) The intent of this section is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective.

(4)(A) A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the permanency planning hearing and preceding the termination of parental rights hearing is an insufficient reason to not terminate parental rights.

(B) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights.

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

(B) This section does not require that a permanency planning hearing be held as a prerequisite to the filing of a petition to terminate parental rights or as a prerequisite to the court's considering a petition to terminate parental rights.

(2)(A) The petitioner shall provide the parent, parents, or putative parent or parents actual or constructive notice of a petition to terminate parental rights.

(B) In addition to providing constructive notice of the hearing to terminate parental rights, the petitioner shall check with the Putative Father Registry if the name or whereabouts of the putative father is unknown.

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(b) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(c) Material support consists of either financial contributions or food, shelter, clothing, or other necessities when the contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(d) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(ii)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(iii) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father;

(iv) A parent has abandoned the juvenile;

(v)(a) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval.

(b) If the consent is executed under oath by a person authorized to administer the oath, the parent is not required to execute the consent in the presence of the court unless required by federal law or federal regulations;

(vi)(a) The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents or step-parent or step-parents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;



(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies;

(viii) The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life; or

(ix)(a) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

(1) Have committed murder or manslaughter of any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit the murder or manslaughter;

(2) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury to any juvenile;

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months;

(4) Have had his or her parental rights involuntarily terminated as to a sibling of the child; or

(5) Have abandoned an infant, as defined at § 9-27-303(2).

(b) This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section.

(c)(1) An order terminating the relationship between parent and juvenile divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, except the right of the juvenile to inherit from the parent, that is terminated only by a final order of adoption.

(2)(A)(i) Termination of the relationship between a juvenile and one (1) parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

(ii) If no legal rights have been established, a putative parent must prove that significant contacts existed with the juvenile in order for the putative parent's rights to attach.

(B)(i) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights.

(ii) The notice shall identify the rights sought to be terminated and those that may be terminated.

(iii) The notice shall further specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach.

(3) An order terminating parental rights under this section may authorize the department to consent to adoption of the juvenile.

(d) The court shall conduct and complete a termination of parental rights hearing within ninety (90) days from the date the petition for termination of parental rights is filed unless continued for good cause as articulated in the written order of the court.

(e) A written order shall be filed by the court or by a party or party's counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner.

(f) After the termination of parental rights hearing, the court shall review the case at least every six (6) months, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(g)(1)(A) A parent may withdraw consent to termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the circuit clerk in the county designated by the consent as the county in which the termination of parental rights will be filed.

(B) If the ten-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(C) No fee shall be charged for the filing of the affidavit.

(2) The consent to terminate parental rights shall state that the person has the right of withdrawal of consent and shall provide the address of the circuit clerk of the county in which the termination of parental rights will be filed.

**History.** Acts 1989, No. 273, § 40; 1991, No. 557, § 1; 1995, No. 811, § 1; 1995, No. 909, § 1; 1995, No. 1335, § 7; 1995, No. 1337, § 10; 1997, No. 1227, § 13; 1999, No. 401, § 14; 1999, No. 1306, § 1; 2001, No. 1503, § 14; 2003, No. 1166, § 19; 2003, No. 1319, §§ 23, 24; 2005, No. 1990, § 18; 2007, No. 587, §§ 21-23; 2009, No. 956, §§ 20, 21.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.



The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2005 amendment added (a)(4)(A), (a)(4)(B) and (b)(2)(B); substituted "returning the child to the custody of" for "continuing contact with" in (b)(3)(A)(ii); deleted "and the conditions in subdivision (b)(3)(B)(i) or (ii) of this section have also been established" at the end of (b)(3)(B)(viii); substituted "juvenile" for "child" in (b)(3)(B)(ix)(a)(1); in (b)(3)(B)(ix)(a)(2) substituted "juvenile" for "child," and added "or to have aided or abetted, attempted, conspired, or solicited to commit felony battery or assault that results in serious bodily injury to any juvenile"; in (b)(3)(B)(ix)(a)(3) substituted "any juvenile" for "the child," and added the last clause and (A) and (B); and, in (f), substituted "the" for "an order of" and

"hearing" for "is filed," and inserted "and a permanency planning hearing shall be held each year following the initial permanency hearing."

The 2007 amendment, in (b)(3)(B)(vi)(a), inserted "or a sibling" and "or step-parent or step-parents"; substituted "three (3) or more" for "more than three (3)" in (b)(3)(B)(ix)(a)(3)(B)(ii); deleted former (d)(2) and made related changes; and deleted "every three (3) months when the goal is adoption and, in other cases" following "at least" in (f).

The 2009 amendment made a minor stylistic change in (b)(3)(B)(i)(a), inserted (b)(3)(B)(v)(b) and redesignated the existing text of (b)(3)(B)(v) accordingly, deleted "voluntary" preceding "manslaughter" in two places in (b)(3)(B)(ix)(a)(1), and deleted "or assault" following "battery" in two places in (b)(3)(B)(ix)(a)(2); and deleted (c)(4).

## RESEARCH REFERENCES

**A.L.R.** Parents' mental illness or mental deficiency as ground for termination of parental rights — Constitutional issues. 110 A.L.R.5th 579.

Parents' mental illness or mental deficiency as ground for termination of parental rights — General considerations. 113 A.L.R.5th 349.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Effect on parenting ability and parental rights. 116 A.L.R.5th 559.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Best interests analysis. 117 A.L.R.5th 349.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Issues concerning guardian ad litem and counsel. 118 A.L.R.5th 561.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Applicability of Americans With Disabilities Act. 119 A.L.R.5th 351.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Evidentiary issues. 122 A.L.R.5th 337.

Parents' mental illness or mental deficiency as ground for termination of parental rights—Issues concerning rehabilitative and reunification services. 12 A.L.R.6th 417.

**Ark. L. Rev.** Recent Developments, Domestic Relations — Termination of Parental Rights, 57 Ark. L. Rev. 1015.

Note, What About the Child?: A Critique of Linker-Flores v. Arkansas Department of Human Services, 60 Ark. L. Rev. 353.

**U. Ark. Little Rock L.J.** Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 913.

Annual Survey of Case Law, Family Law, 28 U. Ark. Little Rock L. Rev. 744.

## CASE NOTES

### ANALYSIS

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### In General.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992).

Subdivision (c)(1) of this section and § 9-9-215(a)(1) point to a public policy which, in determining what is in the child's best interest, favors a complete severing of the ties between a child and its biological family when he is placed for adoption. *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

The Department of Human Services was not required to have physical or legal custody of a child in order to proceed where an amendment to the statute which deleted such requirement took effect before the appellant's parental rights were actually terminated. *Moore v. Arkansas Dep't of Human Servs.*, 333 Ark. 288, 969 S.W.2d 186 (1998).

The rights of natural parents are not to be passed over lightly, but these rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. Parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

Father's rights to his children were not terminated because he was incarcerated, but rather because the statutory requirements for termination were met by clear and convincing evidence; the children had been adjudicated dependent-neglected, had been out of the home for more than 12 months, and the Department of Human Services made a meaningful effort to rehabilitate the home and correct the conditions that caused removal, but despite

that effort, the father did not remedy those conditions. *Johnson v. Ark. Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002).

Because a mother failed to file a timely notice of appeal pursuant to Ark. R. App. P. Civ. 2 from the trial court's adjudication order, the appellate court was unable to consider the mother's arguments relating to errors made during the adjudication hearing; however, the appellate court did consider whether the trial court's failure to provide counsel, pursuant to § 9-27-316, to the mother during the adjudication hearing tainted the remainder of the case, which resulted in termination of parental rights, and found no such taint. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship; however, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Even in a case involving termination of parental rights where constitutional issues are argued, the appellate court will not consider arguments made for the first time on appeal; therefore, the judgment terminating the father's parental rights was affirmed. *Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 208 S.W.3d 241 (2005).

Where the five-month-old child was removed from the home after suffering non-accidental trauma consistent with shaken baby syndrome, the father's parental rights were properly terminated; adoptability was but one factor to consider and the trial court specifically stated that the children were adoptable, notwithstanding any disabilities. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005).

Subdivision (c)(1)(2)(A)(i) of this section clearly contemplates termination of only a single parent's parental rights. *Griffin v. Ark. Dep't of Health and Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006).

### Purpose.

The purpose of this section is to provide permanency in a juvenile's life in all instances where return of a juvenile to the

family home is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that return to the family home cannot be accomplished in a reasonable period of time. *Thompson v. Arkansas Dep't of Human Servs.*, 59 Ark. App. 141, 954 S.W.2d 292 (1997).

Order terminating a mother's parental rights to her two children was upheld as the children had been with a foster family for three years and such a delay went against the clear legislative intent of this section. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

### **Adoption Subsidies.**

Administrative law judge erred in finding that children were not in the state's custody for adoption subsidy purposes because, although the children were in their aunt's physical custody, the state maintained a supervisory role over the children through the context of the protective-services case that remained open on the children until their parents' rights were terminated. *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

### **Appeal.**

In a termination of parental rights appeal, under Ark. Sup. Ct. & Ct. App. R. 3-1 and 3-2, the "entire record" could be properly prepared and transmitted by the circuit clerk without including the case plan, even though the plan had in fact been filed in accordance with § 9-27-402(c)(5)(A); it was the mother's burden to bring up an adequate record for review and, because the record omitted the case plan, the court could not review the mother's due process claim. *Rodriguez v. Ark. Dep't of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004).

Appellate court declined to "summarily" affirm trial court's termination of parental rights based on appellant's failure to include an abstract of dependency-neglect proceedings in the appeal record because former subdivision (d)(2) of this section clearly requires that the pleadings and testimony from hearings prior to the termination hearing are to be incorporated by reference into the trial record; there is no language in the statute that can be interpreted to mean that those proceedings must also be designated as a part of

the appeal record, and such an interpretation of the statute would be inconsistent with Ark. R. App. P. Civ. 3(e) and 6(b). *Cobbs v. Ark. Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004).

Father's motion to file a belated appeal of an order terminating his parental rights was granted as the failure of father's counsel to inform him that he had the right to appeal the order was a good reason to grant the motion. *Flannery v. Ark. HHS*, 368 Ark. 31, 242 S.W.3d 619 (2006).

### **Americans with Disabilities Act.**

Parent failed to demonstrate that her rights pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12132, were violated when she was denied visitation with her child and her parental rights were terminated, where parent was not denied any services on the basis of her mental disability, but denial of visitation and termination of parental rights was based solely on the best interests of the child. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

### **Availability of Remedy.**

Termination of parental rights is a remedy available only to the Department of Human Services (DHS) (and to a guardian ad litem beginning in 1997) and not to private litigants; therefore, the right of dismissal accrues to DHS as the petitioner, and not to a parent. *M.T. v. Arkansas Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

Subsection (a) of this section does not require that termination of parental rights be a predicate to permanent placement, but only that the Department of Human Services be attempting to clear the juvenile for permanent placement when parental rights are terminated. *M.T. v. Arkansas Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

In a proceeding seeking to set aside a prior divorce decree adjudicating a purported father the legal parent of a minor child, a trial court lacked authority to terminate the father's parental rights because the action was not filed by an attorney ad litem or the Arkansas Department of Human Services. *Hudson v. Kyle*, 352 Ark. 346, 101 S.W.3d 202 (2003).



**Collateral Attack.**

Because juvenile courts have exercised jurisdiction over juveniles in the past under color of state law, their proceedings and judgments are not subject to collateral attack. *Hutton v. Arkansas Dep't of Human Servs.*, 303 Ark. 512, 798 S.W.2d 418 (1990).

**Construction with Other Law.**

This section provides that the court may only consider a termination of parental rights petition if there "is an appropriate permanency placement plan"; however, it must be read in harmony with § 9-27-338, which mandates a permanency planning hearing. *Phillips v. Ark. Dep't of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004).

**Continuance for Good Cause.**

There was good cause for a continuance of a mother's parental rights termination hearing — and a circuit court abused its discretion in denying the continuance — because the continuance would have allowed the mother to execute a consent and waiver so that her son could be adopted by his grandmother. *Rhine v. Ark. Dep't of Human Servs.*, 101 Ark. App. 370, 278 S.W.3d 118 (2008).

**Default Judgment.**

In a termination of parental rights case under this section, a trial court did not really enter a default judgment against a father due to a failure to appear, despite the use of such language, due to its extensive consideration of the evidence in the case. The trial court's approach satisfied its obligation to determine the best interest of the child and to safeguard the father's equal protection and due process rights to the children. *Osborne v. Ark. Dep't of Human Servs.*, 98 Ark. App. 129, 252 S.W.3d 138 (2007).

**Due Process.**

Order terminating a mother's parental rights to her children pursuant to this section was upheld because she was not deprived of her parental rights without due process since she had notice of the hearing and was given the opportunity to voice her objection to fact that the trial court failed to order continuation of reunification services. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

**Evidence.**

Evidence was sufficient to support termination of the parental rights where (1) the child was treated for a spiral fracture of her left humerus when she was 20 days old, (2) after an investigation and hearing, a determination of neglect, the placement of the child in foster care, counseling of the parents and supervised visitation, a review hearing was held and unsupervised visitation was permitted, and (3) during the first brief unsupervised visit, the child was injured and suffered extensive facial bruising. *Ullom v. Arkansas Dep't of Human Servs.*, 67 Ark. App. 77, 992 S.W.2d 813 (1999).

Evidence established that the Department of Human Services pursued meaningful efforts to rehabilitate the home and that the parents chose to ignore or failed to benefit from the services provided by the department where the department provided the parents with counseling and parenting classes and they were allowed visitation with the child, but, following their participation in the counseling and parenting classes, the child suffered a new injury at her initial unsupervised visit with them, and the department then changed the goal of its plan from reunification to termination of parental rights. *Ullom v. Arkansas Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000).

Evidence established that the parents manifested an incapacity or indifference to remedy the subsequent issues or factors that demonstrated that return of the child to the family home would be contrary to her health, safety, or welfare where, when the child was only 21 days old, the parents caused her to suffer a spiral fracture and then, even after receiving family services provided by the Department of Human Services, on the very next occasion in which they were alone with the child, she suffered bruising to both sides of her face, for which no satisfactory explanation was provided. *Ullom v. Arkansas Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000).

The chancellor did not err in terminating the parental rights of a mother, who was in and out of jail during the pendency of the case, where she conceded that she did not correct the conditions that caused her children's removal, she made no attempt to comply with the court's orders even when she was not incarcerated, she



remained out of jail or rehabilitation for only 24 days during the pendency of the case and admitted that she did not comply with the court orders for even that brief period of time. *Malone v. Arkansas Dep't of Human Servs.*, 71 Ark. App. 441, 30 S.W.3d 758 (2000).

Mother had corrected the conditions that caused her children's removal where (1) the conditions that caused the children's removal were the multiple injuries to the children caused by the mother, the cramped and unsanitary conditions of the trailer in which she was living, and her lack of self-sufficiency, and (2) the witnesses for the Department of Human Services, however, testified at the termination hearing that since the children were removed, the mother had maintained her four-bedroom apartment for over a year-and-a-half, that there were several occasions in which the apartment was sufficiently tidy, that she had been able to otherwise provide for her other children's needs on her own, and the only times there had been an issue of potential abuse were an unreported pinch-mark and a mysterious burn-mark. *Dinkins v. Arkansas Dep't of Human Servs.*, 71 Ark. App. 451, 34 S.W.3d 366 (2000), rev'd, 344 Ark. 207, 40 S.W.3d 286 (2001).

Evidence was insufficient to establish that the mother willfully refused to support her child where there was no appreciable evidence that she had the ability to pay even a nominal amount of support even after she stopped abusing drugs and started working at regular employment. *Minton v. Arkansas Dep't of Human Servs.*, 72 Ark. App. 290, 34 S.W.3d 776 (2000).

A chancellor's ultimate conclusion that the child at issue, a toddler, had not and was unlikely to bond with the mother was clearly erroneous where the mother was allowed only a single overnight visit; the child's foster mother acknowledged that the child required two or three weeks for "settling in," and the Department of Human Services steadfastly opposed giving the mother that kind of time. *Minton v. Arkansas Dep't of Human Servs.*, 72 Ark. App. 290, 34 S.W.3d 776 (2000).

The trial court properly terminated a father's parental rights where (1) the child came to the attention of the state because she suffered sexual abuse, and, as part of the investigation into the abuse, it was

found that she was living under deplorable conditions, (2) during the first year of the child's life, the father provided no support, but was thereafter ordered to pay support and granted reasonable visitation after a paternity test, (3) the father never took any action to protect the child and to remove her from her situation and, although he asserted that he tried unsuccessfully to find her, such excuse was not persuasive, and (4) the father signed a consent that the child be adopted and never asked to intervene in the dependency/neglect case to request that custody be placed with him. *Larscheid v. Arkansas Dep't of Human Servs.*, 343 Ark. 580, 36 S.W.3d 308 (2001).

A mother's parental rights were properly terminated on the ground that her children had been adjudicated to be dependent-neglected and had continued out of the home for 12 months and that, despite a meaningful effort by the department to rehabilitate the home and correct the conditions that caused removal, those conditions had not been remedied by the mother where she had not managed to consistently maintain her home in a sanitary condition or to acquire a steady job which would have enabled her to provide for her children and, in addition, there was evidence that the physical abuse of the children had not ended. *Dinkins v. Arkansas Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

Evidence was sufficient to support the termination of a mother's parental rights where (1) the children had been adjudicated dependent-neglected, they continued out of the home for more than 12 months, and the conditions causing their removal from the home had not been remedied at the time of termination, (2) the Department of Human Services had made meaningful efforts to rehabilitate her home and correct the conditions that caused removal, but the mother failed to take advantage of any of the forms of assistance she was offered, (3) the foster family with whom the children were living wanted to adopt them, (4) the mother was incarcerated for drug abuse at the time of termination and would not be released on parole until she was able to obtain stable housing, a feat she had been unable to accomplish in the two years pending termination of her parental rights, and (5) the mother had been unable to maintain

steady employment when not incarcerated, continued to test positive for drugs, and refused to obtain treatment. *Bearden v. State Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

Termination of parental rights upheld where mother failed to rehabilitate the home and misled the chancery court about her mental health status. *Cassidy v. Arkansas Dep't of Human Servs.*, 76 Ark. App. 190, 61 S.W.3d 880 (2001).

In a termination of parental rights case, where the department of human services (DHS) failed to introduce the case plan into the record at the trial, the case plan could not be introduced by the DHS as part of the record on appeal and could not be considered on appeal; consequently, reversal was necessary. *Rodriguez v. Ark. Dep't of Human Servs.*, 84 Ark. App. 177, 137 S.W.3d 432 (2003).

In a trial for termination of the mother's parental rights, where the psychologist did not testify, but the psychologist's report contained information based on interviews with the mother, the children, and others, it was impossible to determine which conclusions relied upon by the trial court were based on hearsay, or even double-hearsay, and because the trial judge relied upon the report to reach conclusions concerning the mother before the report was even admitted into evidence, the trial court's judgment was reversed. *Rodriguez v. Ark. Dep't of Human Servs.*, 84 Ark. App. 177, 137 S.W.3d 432 (2003).

Terminating a mother's parental rights was based on clear and convincing evidence where (1) the child was originally taken in custody by the state human services department based on sexual abuse allegations, (2) when the department took custody of the child, the mother had legal custody of the child, (3) the child had been adjudicated dependent-neglected, (4) the mother failed to resolve her legal problems, despite having receiving financial assistance from the department to do so, (5) the mother failed to regularly attend her counseling appointments and had either been fired from or quit her job, (6) the trial court found that the mother's behavior in failing to take advantage of the numerous services offered to her indicated that she was not willing to work toward having the child returned to her, and (7) termination was in the child's best interests. *Jefferson v. Ark. Dep't of Human*

*Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

Termination of father's parental rights was proper where the evidence demonstrated that the father failed to address his problems with alcohol and anger management, failed at any meaningful participation in therapy, and refused to establish a stable living environment for his children. *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004).

Where the Arkansas Department of Human Services (ADHS) supervisor testified that she had overheard the mother asking for a phone number so she could call and cancel a therapy appointment and that the mother's house was cold, filled with trash, and smelled like rotting food, the trial court's decision to terminate the mother's parental rights was supported by clear and convincing evidence. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Trial court erred in terminating a mother's parental rights where clear and convincing evidence that such was in the best interest of her children was lacking and, instead, the evidence showed that the mother completed parenting classes, began rehabilitative services, obtained an appropriate home and transportation, addressed her medical problems, obtained employment, commenced counseling, and paid her lot rental payments in advance in an effort to achieve stability. *Trout v. Ark. Dep't of Human Servs.*, 84 Ark. App. 446, 146 S.W.3d 895 (2004), *rev'd*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Trial court properly terminated the parental rights of the mother and father and found that each parent, either as the offender or as the accomplice, had committed a felony battery against a grandson of the mother because the mother's story that she was not involved was implausible considering the medical testimony; termination was in the child's best interests under subdivision (b)(3)(A)(i) and (ii) of this section given that the child was a dependent-neglected child under § 9-27-303(18)(A), and one purpose of § 9-27-302(2)(B) was to protect a juvenile's safety. *Todd v. Ark. Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004).

Evidence demonstrated that potential harm might result if the parents continued contact with the two children, includ-



ing the fact that the case arose primarily from the parents' ongoing and adverse living arrangements that resulted in sexual abuse of their two-year-old daughter, exposure to drug use, pornography, and an unsafe environment, the parents failed to secure stable housing or employment, failed to complete their weekly counseling sessions, and refused on several occasions to submit to random drug testing. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Father's parental rights were properly terminated under subdivision (b)(3)(B)(i)(a) of this section where the child had been adjudicated neglected and had been living away from the home for more than 12 months and, despite the provision of counseling, transportation, furniture, and food stamps, the father had neglected the child's medical and educational needs during a trial placement. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Trial court erred in finding DHS had proved the grounds to terminate parental rights by clear and convincing evidence where, for the five months between the permanency planning hearing and the termination hearing, the mother showed significant improvement and met nearly all of the case plan requirements except a steady course of counseling; however, the mother had a history and rapport with her counselor, who was encouraged at her progress, and her counselor testified that the most important factor in the mother's stability was taking her medication, which she was doing. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 87 Ark. App. 35, 185 S.W.3d 133 (2004).

Appellant's parental rights were properly terminated given evidence that appellant did not have stable housing or a stable job and had failed to complete a case plan; appellant could not complain that the Arkansas Department of Human Services (ADHS) had failed to make a referral for a psychological evaluation given appellant's failure to keep in contact with ADHS, and there was sufficient evidence to find that the children were adoptable. *Cobbs v. Ark. Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004).

Trial court erred by terminating a mother's parental rights without giving the mother a reasonable time to demonstrate

that her child could be safely returned to her home where, at the review hearing, testimony indicated that the mother had not tested positive for drugs, remained drug free throughout the entire program, and maintained stable employment; the evidence demonstrated that she had corrected the conditions which led to the removal of her son from her home. *Kight v. Ark. Dep't of Human Servs.*, 87 Ark. App. 230, 189 S.W.3d 498 (2004).

Termination of parental rights was proper where the evidence showed that the mother, who had three children before she was 18, failed to participate in reunification plans, left her children in a foster home in order to return to a relative's house, had no visible means of supporting the children, failed to comply with court orders for 30 months, and left the children unattended. *Maxwell v. Ark. Dep't of Human Servs.*, 90 Ark. App. 223, 205 S.W.3d 801 (2005).

Evidence was sufficient to support termination of parental rights when parents were told to stop smoking in the home because of the children's health problems but they refused to do so, the house was filthy and in disarray, the oldest child came to school reeking of cigarette smoke, and the child had head lice and had to be bathed at school because of poor hygiene. *Sowell v. Ark. Dep't of Human Servs.*, 96 Ark. App. 325, 241 S.W.3d 767 (2006).

Parents' argument that the trial court erred in taking judicial notice of counselor's testimony, which took place prior to the termination hearing, was rejected because the parents did not object to any portion of the counselor's testimony or argue that they were in any way inhibited by the lack of her case file in conducting their cross-examination; the parents were afforded the opportunity to subpoena the counselor but they failed to do so and they also failed to ask for a continuance. *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

Trial court clearly erred in terminating the mother's parental rights as (1) since the mother's psychotic episode, she had made consistent efforts to improve her parenting skills and had reached point where she could raise her children despite her mental deficiencies; (2) the mother made sincere efforts to comply with every order of the court; (3) the only evidence of the mother's failure to comply with the



trial court's orders was the evidence that she would sometimes neglect her house-keeping duties, but there was no evidence that the condition of her home reached the dangerous level that warranted the initial Arkansas Department of Human Services (DHS) intervention; (4) the evidence showed that the mother would need help in caring for her children, but it did not show that the mother was unable and unwilling to care for her children; (5) there was no evidence that mother's efforts to comply with the case plan were insincere; and (6) the children were comfortable with the mother, and she testified that she was ready to take the children into her home and that if she needed help, she knew where to go. *Benedict v. Ark. Dep't of Human Servs.*, 96 Ark. App. 395, 242 S.W.3d 305 (2006).

Termination of a mother's parental rights was proper because the evidence showed that she failed to address her problems with drug abuse, failed at providing any meaningful proof of employment, and refused to establish proof of a stable living environment for her children. *Long v. Arkansas HHS*, 369 Ark. 74, 250 S.W.3d 560 (2007).

Ordering terminating the father's parental rights to his two children was affirmed because: (1) termination of the father's parental rights was in the best interests of the children because there was substantial evidence of the strong likelihood that the children would be adopted, there was evidence of potential harm to the children if they were placed in the father's custody, given his drug problems, and it was entirely possible that the children would be left with the father's parents, who were charged with child endangerment; (2) there was clear and convincing evidence of the father's willful failure to maintain meaningful contact with his children because the evidence showed that he was incarcerated for the majority of the time that the children's case was pending, and during the six-month period that he was not in prison, the father only visited his children twice; instead of finding a job in Arkansas, the father moved out of state to seek work; and (3) there was clear and convincing evidence that the Department had developed an appropriate permanency plan for the children because it presented evidence that the children were at an adoptable

age, they had expressed a desire for stability and permanency, and it had contacted several family matches. *Posey v. Ark. HHS*, 370 Ark. 500, 262 S.W.3d 159 (2007).

Arkansas Department of Human Services established that the father subjected his children to aggravated circumstances based on a finding that he sexually abused them; one child's statements were credible and, along with the other testimony at the hearing, were sufficient to establish that the father perpetrated sexual abuse. *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007).

Court erred in terminating a father's parental rights because the father demonstrated commendable resolve in seeking to remedy his drug problem; at all times since the State was involved with the case, the father had not been found to have any drugs in his system, and there was no evidence that the father's drug treatment would not be successful. *Ivers v. Arkansas Dep't of Human Servs.*, 98 Ark. App. 57, 250 S.W.3d 279 (2007).

In a termination of parental rights case, a trial court did not err by relying on evidence from prior hearings involving the children because proceedings in these type of cases were cumulative. Even if a trial court was required to take judicial notice and incorporate by reference all prior proceedings, such was done in a case where a trial court accepted into evidence numerous documents from prior proceedings without objection. *Osborne v. Ark. Dep't of Human Servs.*, 98 Ark. App. 129, 252 S.W.3d 138 (2007).

Order terminating a mother's parental rights to her child was overturned and the case was remanded where subdivision (b)(3)(B)(vii) of this section did not prohibit the trial court's consideration of the mother's recent mental stability; the trial judge's statement that she had to terminate the mother's parental rights if the child was not able to go home with her immediately after the hearing was also incorrect. *Prows v. Ark. HHS*, 102 Ark. App. 205, 283 S.W.3d 637 (2008).

Father's parental rights were properly terminated, pursuant to subdivisions (b)(3)(A)(i), (ii), and (b)(3)(B)(i)(a) of this section because the four children were adjudicated dependent-neglected and the father failed to maintain appropriate housing, employment, and transportation

and because he exhibited anger problems and had current criminal charges. *Belue v. Ark. Dep't of Human Servs.*, — Ark. App. —, 289 S.W.3d 500 (2008).

Circuit court did not clearly err in finding that the mother's conduct posed a potential harm to the children and that termination was in the children's best interest, because the circuit court was not required to give the mother more time based on a vague hope of improvement, especially where the children had been out of her custody for fourteen months, and the mother had a history of drug and alcohol abuse and inconsistent effort to remedy the abuse, and the mother could not predict when her situation would change for the better. *Childress v. Ark. Dep't of Human Servs.*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 453 (Apr. 22, 2009).

### Findings.

An adjudication of dependency and neglect finding by a juvenile court referee is sufficient to satisfy this section. *Hutton v. Arkansas Dep't of Human Servs.*, 303 Ark. 512, 798 S.W.2d 418 (1990).

Finding parent was unable to be the type of parent child needed, and that parent was not able to learn how to be such a parent, was a sufficient finding by clear and convincing evidence of parent's unfitness to support termination of parental rights. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

Even if the statute does not permit a termination petition to be filed until a child has been out of the home for 12 months, any error that might have occurred when a petition was filed after 11 months was cured where the hearing did not occur until the child had been out of the home for over 14 months. *Donna S. v. Arkansas Dep't of Human Servs.*, 61 Ark. App. 235, 966 S.W.2d 919 (1998).

Subdivision (b)(3)(B)(i)(a) of this section does not require a second dependency-neglect adjudication at the final hearing; it simply requires the Department of Human Services to prove that the children have been adjudicated dependent-neglected. *Bearden v. State Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

Appellate court dismissed father's appeal of the decision finding that his son

was dependent-neglected as moot where father had not appealed a subsequent ruling that terminated his parental rights; this section no longer required a dependent-neglected adjudication before parental rights are terminated. *Masters v. Ark. Dep't of Human Servs.*, 95 Ark. App. 375, 237 S.W.3d 125 (2006).

Termination of the father's parental rights to his son was appropriate pursuant to subdivisions (b)(3)(vii)(a), (b)(3)(B)(ix)(3)(B)(i), and (b)(3)(A) of this section because the father failed to prove that he was able to provide for one of his son's most basic needs, which was a stable home environment. The trial court was not required to ignore the fact that the father and his wife had a long history of a volatile relationship and the father failed to finish his anger-management course until after the permanency-planning hearing, and only two months prior to the termination hearing. *Latham v. Ark. HHS*, 99 Ark. App. 25, 256 S.W.3d 543 (2007).

### Grandparents.

A grandmother's visitation and custody rights were derivative of her daughter's parental rights, and, as a result, were terminated when her daughter's parental rights were terminated. *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

No error in refusing to place the children with the maternal grandmother when the evidence revealed an indifference to the children's welfare on her part. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

### Grounds.

Evidence was sufficient to find that the Department of Human Services made a meaningful effort to rehabilitate the home, that the conditions which caused removal had not been remedied by the parent, and that grounds for the termination of parental rights were proven by clear and convincing evidence. *Beeson v. Arkansas Dep't of Human Servs.*, 37 Ark. App. 12, 823 S.W.2d 912 (1992).

Father's parental rights were terminated where there was clear and convincing evidence that the two sons lived apart from the father for twelve months and that he failed to provide monetary support for them or to make sufficient contact with



them. *Crawford v. Arkansas Dep't of Human Servs.*, 330 Ark. 152, 951 S.W.2d 310 (1997).

Rights may be terminated if the juvenile has lived outside the home of the parent for 12 months and the parent has willfully failed to provide significant material support to his child as ordered by the chancery court and to have meaningful contact with him. *Wade v. Arkansas Dep't of Human Servs.*, 337 Ark. 353, 990 S.W.2d 509 (1999).

Termination appropriate where mother failed to show any consistent improvements in terms of visitation, employment, or housing, and her pattern of inconsistent visitation continued to harm her children even while they were not in her custody. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

Clear and convincing evidence supported the termination of the appellant's parental rights where she had 18 months between the permanency planning hearing and the termination hearing to rehabilitate and correct the conditions that caused removal, but failed to provide a home and to demonstrate the ability to adequately parent the children even after receiving reasonable, rehabilitative services for over three years. *Moore v. Arkansas Dep't of Human Servs.*, 69 Ark. App. 1, 9 S.W.3d 531 (2000).

Trial court erred in terminating parents' rights in their new-born daughter based solely on the fact that the parents' rights to an older sibling had previously been terminated; while the prior termination satisfied subdivision (b)(3)(B)(ix)(a)(4) of this section, such action still required a finding that termination was in the best interests of the child, and the prior termination, standing alone, was not sufficient to support such a finding. *Conn v. Ark. Dep't of Human Servs.*, 79 Ark. App. 195, 85 S.W.3d 558 (2002).

Where a child was left partially paralyzed from a second incident of abuse committed by the mother's boyfriend, the mother was badly mistaken in the belief that her parental rights could not be terminated where the mother had complied with an earlier case plan and did not personally injure child, as it was the mother's duty to take affirmative steps to protect the child from harm. *Wright v.*

*Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

Trial court gave proper weight to the child's wishes when considering a termination petition; there was no error where the trial court found that the child's wishes were not the controlling factor in its decision to terminate the mother's parental rights. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

Where appellant mother did little to disassociate herself with an abusive man who struck her son across the face hard enough to leave marks, the trial court properly terminated her parental rights. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Nothing in § 9-27-338 prohibited the trial court from holding a permanency planning hearing immediately, given that it had already provided notice of no reunification and the DHS's petition to terminate; in addition, the trial court's subsequently termination of the parents' parental rights was not error when, under this section, the fact that the parents had had their parental rights terminated as to their other children was an immediate ground for termination. *Phillips v. Ark. Dep't of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004).

Parental rights were properly terminated where, although the children were not physically beaten, the parents physically endangered the children with a lack of medication, lack of heat, and exposure to items that could have seriously injured or killed them, such as plastic bags in the baby's crib, sharp knives on the floor, and a foot-long rat in the house; in addition, the parents demonstrated a lack of motivation to comply with the case plan by failing to maintain employment and complete classes, and the mother lacked a bond with two of the older children. *Browning v. Ark. Dep't of Human Servs.*, 85 Ark. App. 495, 157 S.W.3d 540 (2004).

Parents' parental rights were properly terminated where, pursuant to subdivision (b)(3)(B)(ix)(a)(4) of this section, the parents rights as to one child were terminated based upon the fact that their parental rights had been terminated as to another child. *Browning v. Ark. Dep't of Human Servs.*, 85 Ark. App. 495, 157 S.W.3d 540 (2004).



Court properly terminated mother's parental rights where the mother failed to maintain meaningful contact with the child by moving to California prior to her adjudication hearing and, although the mother was offered services by the state during the pendency of the case, she refused to return to the state or avail herself of the services; moreover, while in California, the mother failed to maintain steady employment, never established her own residence, and moved in and out of her mother's apartment, which was found to be unsuitable in a California home study. *Mayfield v. Ark. Dep't of Human Servs.*, 88 Ark. App. 334, 198 S.W.3d 541 (2004).

Mother's parental rights were properly terminated on the basis of her incapacity or indifference to remedy subsequent issues where she married a convicted sex offender who could not have unsupervised contact with minors, she did not maintain stable employment, and she stopped taking her medication; further, the children had been out of the home for at least twelve months and it was not until the end of the case, with the termination hearing looming near, that the mother began to take active steps to comply with the case plan. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

Court properly terminated a mother's parental rights where she repeatedly missed her appointments with her various doctors, and she could not budget her money, such that she routinely ran out of food in the middle of the month, but she maintained cable TV; the mother was given ample time to correct her situation and it was in the child's best interests to be placed for adoption because the child was six years old when the proceedings began and, when termination was granted, she was nearly nine. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

Termination of mother's parental rights was proper as statutory grounds existed for the termination, including educational neglect and failure to protect, and evidence supported the trial court's finding that termination was in the children's best interest. *Linker-Flores v. Ark. Dep't of Human Servs.*, 364 Ark. 224, 217 S.W.3d 107 (2005).

There was clear and convincing evidence to terminate father's parental

rights where the four children had been adjudicated dependent-neglected and were out of the home for approximately 17 months, the father lacked stable housing and stable employment, he failed to comply with court orders to provide child support and, although he completed alcohol and drug inpatient treatment, as well as parenting classes and visitation, he repeatedly failed to comply with the circuit court's orders. *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005).

Where the mother's children were removed from her home based on drug use, she failed to comply with the permanency plan and other reunification efforts, and her probation was revoked when she tested positive for drugs, the trial court properly terminated her parental rights. *Causer v. Ark. Dep't of Human Servs.*, 93 Ark. App. 483, 220 S.W.3d 270 (2005).

Although it was very clear that the Arkansas Department of Human Services (ADHS) did not follow the spirit or letter of the mandate in offering reunification services to a mother, the court could not say that, under the evidence presented at the termination hearing, it was reversible error to terminate the mother's rights without ordering further services to her, despite the outrageous and contemptuous conduct of the ADHS, where the children had been out of the home for approximately three years and they could not have been returned to the home in a reasonable amount of time, and where the mother failed a drug test following a first review hearing after remand and she refused all subsequent drug tests. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Trial court did not err in finding that the father had failed to maintain meaningful contact with his child and in terminating the father's parental rights to the child as (1) by the father's own testimony, it was established that his contact with his son was limited to a single two-week period; and (2) while it was true that the father was incarcerated for a portion of that time, there was other evidence that the father chose not to be a part of the child's life because he absented himself from the child's life as soon as he found out that the mother was pregnant and did not return until some three or four years later. *Moore v. Ark. Dep't of Human*

Servs., 95 Ark. App. 138, 234 S.W.3d 883 (2006).

Order terminating mother's parental rights to her three children was upheld as the trial court did not err in placing the oldest child in the custody of a family friend; § 9-27-338(c) clearly anticipated that one of the "goals" could be a plan for permanent custody. *Griffin v. Ark. Dep't of Health and Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006).

Order terminating parents' rights to their three children was upheld where the parents subjected the children to aggravated circumstances, as provided in subdivision (b)(3)(B)(ix)(a)(3) of this section, and the mother's deep-seated psychological problems prevented her from becoming a fit parent in that they caused her to refuse to accept responsibility for her actions; the trial court did not err in finding, pursuant to § 9-27-303(6), that there was little likelihood that services to the family would result in successful reunification. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

Order terminating a father's parental rights was upheld because any error resulting from the premature filing of the termination petition was cured once the 12-month time threshold was satisfied; because the child was placed in foster care on April 18, 2005, and the termination order was not entered until May 3, 2006, the child had been out of the father's custody for over one year. *Riley v. Arkansas HHS*, 98 Ark. App. 235, 253 S.W.3d 928 (2007).

According to the Arkansas Supreme Court's interpretation of the temporal mandate in this section, the clock commences on the date the child is removed from the home and does not stop until the termination of parental rights order is entered. *Riley v. Arkansas HHS*, 98 Ark. App. 235, 253 S.W.3d 928 (2007).

Termination of parental rights was proper due to aggravated circumstances because the mother engaged in repeated cruelty to the children by striking them, she left Arkansas and returned to Louisiana, despite the fact that she knew Louisiana was unable to provide necessary services to her, she was not credible in her testimony concerning her inability to complete basic case-plan goals, such as obtaining housing and employment, and she had remained unemployed over the previous

two years. *Davis v. Arkansas HHS*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Termination of a mother's parental rights was proper because a case worker testified that in her opinion it was in the children's best interests to terminate the parental rights and to allow the children to have an opportunity to "unlearn" their aggressive, destructive behaviors. She explained that she had interacted with them and that they were sweet children, and she thought "working with the children with their therapy that they could be adopted." *Davis v. Arkansas HHS*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Mother's parental rights were terminated where, pursuant to subdivision (a)(3) of this section, the legislature's overriding intent was to protect the best interest of the child; while the mother attempted to be a parent, she was not able to be, and improvement and compliance toward the end of a case plan would not necessarily bar termination of parental rights. *Meriweather v. Arkansas HHS*, 98 Ark. App. 328, 255 S.W.3d 505 (2007).

Termination of the parents' parental rights to their children was proper under subsection (b) of this section because the trial court had before it clear and convincing evidence of the children's abuse. *Williams v. Ark. HHS*, 99 Ark. App. 95, 257 S.W.3d 574 (2007).

Father's parental rights to his child were properly terminated under subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section where there was little likelihood that services to the family would result in successful reunification; the father tested positive for drugs throughout the case, including on the date of the permanency-planning hearing. *Smith v. Ark. HHS*, 100 Ark. App. 74, 264 S.W.3d 559 (2007).

Clear and convincing evidence warranted a termination of parental rights where the evidence showed that a father left bruises and bite marks on his children, viewed pornography, abused their mother, refused to attend counseling, and failed to pay child support; it was not necessary to address the father's argument regarding the lack of findings of sexual abuse because there was sufficient evidence to support the finding that the children had been adjudicated dependent-neglected and remained out of his custody for more than 12 months. The father did not argue that services were not provided



to him; he argued that there were services that could have been provided, but were not. *Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, 278 S.W.3d 609 (2008).

Termination of parental rights was appropriate because despite the fact that parents complied with the case plan and with trial court orders, they were still not capable of caring for the children; the mother had not accepted responsibility for the removal, had not addressed environmental issues, and would reconnect with the father, and the father was unwilling to admit fault, was abusive and was incarcerated. In addition, the children had been removed from their parents care for a period in excess of twelve months. *Lee v. Ark. DHS*, 102 Ark. App. 337, 285 S.W.3d 277 (2008).

Mother's parental rights were improperly terminated, under this section, where the facts warranting the termination were not proven by clear and convincing evidence; the mother maintained some type of housing, although it was not a fixed location, and the residences were not unsafe or inappropriate for her two children. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. App. LEXIS 745 (Oct. 22, 2008).

Termination of parental rights was in a child's best interests because the parents struggled with drug and alcohol abuse, failed to fully participate in counseling, failed to maintain stable housing or employment, failed to attend scheduled visitation with the child, and failed to provide financial support for the child. *Rohr v. Ark. Dep't of Human Servs.*, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 801 (Nov. 19, 2008).

Father's partial compliance with certain aspects of a case plan did not warrant reversal of a termination order because his compliance did not make him capable of caring for his children. *Belue v. Ark. Dep't of Human Servs.*, — Ark. App. —, 289 S.W.3d 500 (2008).

Termination of parental rights was warranted, under subdivision (b)(3)(B)(ii)(a) of this section, because the parents lacked the mental capacity to raise a child and because, despite meaningful services, the parents were unable to remedy the circumstances that caused the removal of the child within one year. *Dowdy v. Ark. Dep't of Human Servs.*, — Ark. App. —, —

S.W.3d —, 2009 Ark. App. LEXIS 229 (Mar. 11, 2009).

### **Imprisonment.**

Former subdivision (2)(H)(ii) requires only that a sentence exceed 15 years, not that 15 years actually be served; thus, the putative father of a child was sentenced to an amount of time that was "substantial" within the meaning of this section where, by virtue of his parole revocation, he was effectively "sentenced" to the remainder of his 30-year sentence and either had a new 15 ½ year sentence or had been "sentenced" to 30 years, of which he had already served 14 ½ years. *Jones v. Arkansas Dep't of Human Servs.*, 70 Ark. App. 397, 19 S.W.3d 58 (2000).

There was clear and convincing evidence warranting termination of an incarcerated mother's parental rights to her minor child came into care due to the mother's drug use and instability, the child had been out of the home in excess of 12 months, and conditions had not been remedied; further, the mother was incarcerated again for drugs and sentenced to 144 months in prison for having a methamphetamine lab in her home with the child present. *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, 219 S.W.3d 705 (2005).

Trial court did not err in terminating a father's parental rights under subdivision (b)(3)(B)(vii) of this section on the ground that he was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the child's life because the child was 10 months old when the father received a 10-year sentence for drug offenses. *Fields v. Ark. Dep't of Human Servs.*, 104 Ark. App. 37, 289 S.W.3d 134 (2008).

### **Jurisdiction.**

The exercise of jurisdiction over juveniles is not a permissible function of the county courts. *Hutton v. Arkansas Dep't of Human Servs.*, 303 Ark. 512, 798 S.W.2d 418 (1990).

### **Order.**

Although this section speaks in mandatory terms with regard to the filing of a written order within 30 days of the date of the termination hearing, a loss of jurisdiction does not follow because the General Assembly did not provide a sanction for an untimely filing and because there is no



evidence that such a result was intended. *Wade v. Arkansas Dep't of Human Servs.*, 337 Ark. 353, 990 S.W.2d 509 (1999).

### Standards of Review.

When the burden of proving a disputed fact in chancery is by clear and convincing evidence, the question on appeal is whether the chancellor's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of witnesses. *M.T. v. Arkansas Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

There are no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carries as great a weight as when the interests of minor children are involved; thus, on review, the Supreme Court of Arkansas gives a high degree of deference to the trial court. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

In a termination of parental rights case, in reviewing the trial court's evaluation of the evidence, the appellate court will not reverse unless the trial court's finding of clear and convincing evidence is clearly erroneous; in matters involving the welfare of young children, the appellate court will give great weight to the trial judge's personal observations. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Appellate court reviews termination of parental rights cases *de novo*, and grounds for termination of parental rights must be proven by clear and convincing evidence. *Kight v. Ark. Dep't of Human Servs.*, 87 Ark. App. 230, 189 S.W.3d 498 (2004).

Mother's parental rights were improperly terminated, under this section, where the facts warranting the termination were not proven by clear and convincing evidence; the mother maintained some type of housing, although it was not a fixed location, and the residences were not unsafe or inappropriate for her two children. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. App. LEXIS 745 (Oct. 22, 2008).

### Unfitness of Parent.

Merely being uninterested is insufficient to support termination of parental

rights, but a lack of interest which results in a failure to learn the special feeding techniques and therapies required to care for a child is tantamount to unfitness. *Beeson v. Arkansas Dep't of Human Servs.*, 37 Ark. App. 12, 823 S.W.2d 912 (1992).

Parent held not to have the capacity to be the type of parent needed by child with high needs, in light of testimony by therapists and psychiatrist that parent could not provide stable environment child required because of parent's mental illness. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

Parental rights terminated where there was clear and convincing evidence that the child was the victim of neglect or abuse perpetrated by the parents. *Gregg v. Arkansas Dep't of Human Servs.*, 58 Ark. App. 337, 952 S.W.2d 183 (1997).

Where the court terminated a mother's parental right to her oldest child after a two year custody proceeding in which the mother demonstrated she was an unfit parent and indifferent to the needs of her children by failing to comply with the court's orders to get counselling and disassociate herself with an abusive man, the court also properly terminated her parental right to her younger son, who had only been in her custody for five months, as there was little likelihood that continued services would result in reunification. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Parents' argument that the Arkansas Department of Human Services (ADHS) failed to present clear and convincing evidence that it made reasonable efforts to rehabilitate the father was rejected because the ADHS was relieved of the burden to provide reunification services under § 9-27-303(6) where the father was found to have subjected the daughter to sexual abuse, which was aggravated circumstances under subdivision (b)(3)(B)(ix)(a)(3)(B) of this section. *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

**Cited:** *Office of Child Support Enforcement v. Lawrence*, 57 Ark. App. 300, 944 S.W.2d 566 (1997); *Tackett v. Merchant's Sec. Patrol*, 73 Ark. App. 358, 44 S.W.3d 349 (2001); *Burks v. Arkansas Dep't of Human Servs.*, 76 Ark. App. 71, 61 S.W.3d 184 (2001).

**9-27-342. Proceedings concerning illegitimate juveniles.**

(a) Absent orders of a circuit court or another court of competent jurisdiction to the contrary, the biological mother, whether adult or minor, of an illegitimate juvenile is deemed to be the natural guardian of that juvenile and is entitled to the care, custody, and control of that juvenile.

(b) The biological mother, the putative father, the juvenile himself or herself, or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may bring an action to establish paternity or support of a juvenile alleged to be illegitimate.

(c)(1) If the juvenile is not born when the parties appear before the court, the court may hear evidence and issue temporary orders and findings pending the birth of the juvenile.

(2) In the event the final order is contrary to the temporary one, the court shall render judgment for the amount paid under the temporary order against the petitioner if such was the biological mother.

(3) If the mother dies before the final order, the action may be revived in the name of the juvenile, and the mother's testimony at the temporary hearing may be introduced in the final hearing.

(d) Upon an adjudication by the court that the putative father is the father of the juvenile, the court shall follow the same guidelines, procedures, and requirements as established by the laws of this state applicable to child support orders and judgments entered upon divorce. The court may award court costs and attorney's fees.

(e) If paternity has been established in a court of competent jurisdiction, a father may petition the court in the county where the juvenile resides for custody of the juvenile. The court may award custody to a father who has had paternity established if the court finds by a preponderance of the evidence that:

(1) He is a fit parent to raise the juvenile;

(2) He has assumed his responsibilities toward the juvenile by providing care, supervision, protection, and financial support for the juvenile; and

(3) It is in the best interest of the juvenile to award custody to the father.

(f) At the request of either party in a paternity action, the trial court shall direct that the putative father, biological mother, and juvenile submit to one (1) or more blood tests or other scientific examinations or tests, including deoxyribonucleic acid typing, to determine whether or not the putative father can be excluded as being the father of the juvenile and to establish the probability of paternity if the test does not exclude the putative father.

(g) The tests shall be made by a duly qualified physician or physicians, or by another duly qualified person or persons, not to exceed three (3), to be appointed by the court.

(h)(1) The results of the tests shall be receivable in evidence.



(2)(A) A written report of the test results by the duly qualified expert performing the test, or by a duly qualified expert under whose supervision and direction the test and analysis have been performed, certified by an affidavit duly subscribed and sworn to by the expert before a notary public, may be introduced in evidence in illegitimacy actions without calling the expert as a witness. If either party shall desire to question the expert, the party shall have the expert subpoenaed within a reasonable time prior to trial.

(B) If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the juvenile and after corroborating testimony of the mother in regard to access during the probable period of conception, this shall constitute a prima facie case of establishment of paternity and the burden of proof shall shift to the putative father to rebut such proof.

(3) The experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings.

(i) Whenever the court orders the blood tests to be taken and one (1) of the parties refuses to submit to the test, that fact shall be disclosed upon the trial unless good cause is shown to the contrary.

(j) The costs of the test and witness fees shall be taxed by the court as other costs in the case.

(k) Whenever it shall be relevant to the prosecution or the defense in a paternity action, blood tests that exclude third parties as the father of the juvenile shall be the same as set out in subsections (f) and (g) of this section.

(l) The refusal of a party to submit to a genetic or other ordered test is admissible at a hearing to determine paternity only as to the credibility of the party.

(m) If a male witness offers testimony indicating that his act of intercourse with the mother may have resulted in the conception of the juvenile, the court may require the witness to submit to genetic or other tests to determine whether he is the juvenile's father.

**History.** Acts 1989, No. 273, § 41; 1995, No. 1184, § 20; 2003, No. 1166, § 20.

## CASE NOTES

### Attorney's Fees.

Both § 9-10-109(a) and subsection (d) of this section provide a statutory basis for awarding attorney's fees in paternity actions. *Beavers v. Vaughn*, 41 Ark. App. 96, 849 S.W.2d 6 (1993).

Trial court did not abuse its discretion

in denying mother's motion for attorney's fees in a paternity action; the trial court considered the proper factors in deciding the mother's attorney's fee motion and she failed to show an abuse of discretion by the trial court. *Davis v. Williamson*, 359 Ark. 33, 194 S.W.3d 197 (2004).



### 9-27-343. Appeals.

(a) All appeals from juvenile cases shall be made to the Supreme Court or to the Court of Appeals in the time and manner provided for appeals in the Arkansas Rules of Appellate Procedure.

(b) In delinquency cases, the petitioner may appeal only under those circumstances that would permit the state to appeal in criminal proceedings.

(c) Pending an appeal from any case involving a juvenile out-of-home placement, the juvenile division of circuit court retains jurisdiction to conduct further hearings.

**History.** Acts 1989, No. 273, § 42; 1999, No. 401, § 15; 2003, No. 1166, § 21; 2003, No. 1319, § 25.

### CASE NOTES

#### ANALYSIS

Due Process.

Lower Court Jurisdiction.

#### Due Process.

Due process requirements ordinarily accorded criminal defendants extend to safeguard the juvenile's appeal. *Gilliam v. State*, 305 Ark. 438, 808 S.W.2d 738 (1991).

#### Lower Court Jurisdiction.

Trial court retains jurisdiction to hold an additional hearing subsequent to the

filing of a notice of appeal and the lodging of a trial transcript where the case involves a juvenile out-of-home placement; therefore, a trial court was allowed to terminate a mother's parental rights while her appeal from a decision regarding a petition for dependency-neglect was pending. *Harwell-Williams v. Ark. Dep't of Human Servs.*, 368 Ark. 183, 243 S.W.3d 898 (2006).

**Cited:** *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991); *D.J. v. State*, 308 Ark. 37, 821 S.W.2d 782 (1992).

### 9-27-344. Monthly report.

The circuit court shall submit monthly to the Director of the Administrative Office of the Courts a report in writing upon forms to be furnished by the director showing the number and disposition of juveniles brought before the juvenile division of circuit court together with such other information regarding those cases as may be requested by the director.

**History.** Acts 1989, No. 273, § 43; 2003, No. 1166, § 22.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

### 9-27-345. Admissibility of evidence.

(a) Juvenile adjudications of delinquency for offenses for which the juvenile could have been tried as an adult may be used at the

sentencing phase in subsequent adult criminal proceedings against those same individuals.

(b)(1) No other evidence adduced against a juvenile in any proceeding under this subchapter nor the fact of adjudication or disposition shall be admissible evidence against the juvenile in any civil, criminal, or other proceeding.

(2) However, the evidence shall be admissible when proper in subsequent proceedings against the same juvenile under this subchapter.

**History.** Acts 1989, No. 273, § 44; 1993, No. 535, § 5; 1993, No. 551, § 5.

#### CASE NOTES

**Cited:** Bell v. State, 371 Ark. 375, 266 S.W.3d 696 (2007).

#### 9-27-346. Support orders.

(a) If it appears at the adjudication or disposition hearing in any case brought under this subchapter that the parents or any other person named in the petition who is by law required to provide support for the juvenile is able to contribute to the support of the juvenile, the court shall issue an order requiring the person to pay a reasonable sum pursuant to the guidelines for child support and the family support chart for the support, maintenance, or education of the juvenile to any person, agency, or institution to whom custody is awarded.

(b) The court, upon proper motion, may make such adjustments and modifications of the order as may appear reasonable and proper.

(c) The court shall also order the persons required by law to support a juvenile to disclose their places of employment and the amounts earned by them. Anyone who refuses to disclose such information may be cited for contempt of court.

**History.** Acts 1975, No. 451, § 31; A.S.A. 1947, § 45-431; Acts 1993, No. 1152, § 1; 1997, No. 1296, § 38; 2003, No. 1166, § 23.

**A.C.R.C. Notes.** This section was formerly codified as § 9-27-357.

#### CASE NOTES

**Cited:** Pender v. McKee, 266 Ark. 18, 582 S.W.2d 929 (1979).

#### 9-27-347. Probation reports.

(a) The probation officer shall make and keep a complete history of each case before disposition and during the course of any probation imposed by the circuit court.

(b)(1) It is the intention of this section to require an intelligent and thorough report of each juvenile before probation and during probation

as to heredity, environment, condition, treatment, development, and results.

(2) The report shall contain among other information the age, sex, nativity, residence, education, mentality, habits, whether married or single, and employment and income and shall be continued so as to show the condition of the person during the term of his or her probation and the results of probation in the case.

(3) The report shall never be disclosed except as required by law or directed by the court.

(c) The probation officer shall furnish to each person released on probation a written statement of the terms and conditions of probation and shall report to the court any violation or breach of the terms and conditions so imposed.

**History.** Acts 1975, No. 451, § 34; A.S.A. 1947, § 45-434; Acts 2003, No. 1166, § 24.

**A.C.R.C. Notes.** This section was formerly codified as § 9-27-358.

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1,

2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

## RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

## CASE NOTES

**Cited:** K.N. v. State, 360 Ark. 579, 203 S.W.3d 103 (2005).

## 9-27-348. Publication of proceedings.

No information by which the name or identity of a juvenile who is the subject of proceedings under this subchapter may be ascertained shall be published by the news media without written order of the circuit court.

**History.** Acts 1975, No. 451, § 43; A.S.A. 1947, § 45-443; Acts 2003, No. 1166, § 25.

**A.C.R.C. Notes.** This section was formerly codified as § 9-27-364.

Ark. Const., Amend. 80, adopted by voter referendum and effective July 1,

2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

## RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.



## CASE NOTES

**Applicability.**

Juveniles arrested for felonies, but not charged as delinquent juveniles were not “the subject of proceedings,” and therefore this section does not specifically apply. This construction is confirmed by the

phrase “without written order of the juvenile court,” which clearly means that this section is to apply only to cases filed in the juvenile court. *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992).

**9-27-349. Compliance with federal acts.**

The Division of Youth Services of the Department of Human Services shall have the responsibility for the collection, review, and reporting of statistical information on detained or incarcerated juveniles, for adult jails, adult lock-ups, and juvenile detention facilities to assure compliance with the provisions of Pub. L. No. 93-415, the Juvenile Justice and Delinquency Prevention Act of 1974.

**History.** Acts 1975, No. 451, § 46; A.S.A. 1947, § 45-446; Acts 1989, No. 430, § 1; 1989, No. 514, § 1; 2007, No. 587, § 24.

**A.C.R.C. Notes.** This section was formerly codified as § 9-27-365.

Acts 1993, No. 1296, § 2, provided, in part: “By July 1, 1993, the Governor shall evaluate effectiveness of the Division of Children and Family Services within the Department of Human Services in regard to its responsibilities toward Arkansas youths involved with the juvenile justice system. Upon completion of this evaluation, the Governor may approve the establishment of a new division within the Department of Human Services devoted entirely to handling the problems of youths involved with the juvenile justice system.”

Acts 1993, No. 1296, § 4, provided: “(a) Upon determination by the Governor that a reallocation of resources is necessary for the efficient and effective implementation of the restructuring of the child welfare system, the Director of the Department of Human Services, under the direction of the Governor, shall have the authority to

request, from the Chief Fiscal Officer of the State, a transfer of appropriations established in this act, and positions established by this act and/or funds provided herein, between appropriations and funds within the Department of Human Services as required to implement changes in the child welfare system. The Chief Fiscal Officer of the State, prior to approving the request, shall submit his recommendation to the Arkansas Legislative Council for its review.

“(b) If it is determined that the requested transfer should be made, the Chief Fiscal Officer of the State shall initiate the necessary documents to reflect the transfer upon the fiscal records of the State Treasurer, the State Auditor, the Chief Fiscal Officer of the State and the affected state agencies.”

**Amendments.** The 2007 amendment substituted “Youth” for “Children and Family,” inserted “Health and,” and made a stylistic change.

**U.S. Code.** The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in this section, is codified as 42 U.S.C. § 5601 et seq.

**9-27-350. Compacts to share costs.**

Nothing in this subchapter shall prohibit two (2) or more counties, cities, or school districts of this state from agreeing by compact to share the costs of court personnel or juvenile facilities to serve both or all of the counties so agreeing.

**History.** Acts 1975, No. 451, § 49; A.S.A. 1947, § 45-449; Acts 2003, No. 1166, § 26.

**A.C.R.C. Notes.** This section was formerly codified as § 9-27-366.

### 9-27-351. Escape considered an act of delinquency.

The escape of a juvenile from the locked portion of a juvenile facility is an act of delinquency.

**History.** Acts 1979, No. 815, § 6; A.S.A. 1947, § 45-452.

**A.C.R.C. Notes.** This section was formerly codified as § 9-27-368.

### 9-27-352. [Repealed.]

**A.C.R.C. Notes.** The amendment of § 9-27-352(d) by Acts 2009, No. 334, § 1, was superseded by the repeal of § 9-27-352 by Acts 2009, No. 956, § 22. As amended by Acts 2009, No. 334, § 1, § 9-27-352(d) read as follows:

“(d)(1) When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to the safety of a student, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student safety be provided to the school principal and superintendent where the juvenile is enrolled.

“(2) When a court order amends or removes a safety plan outlined in subdivision (d)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan be provided to the school principal and superintendent where the juvenile is enrolled.

“(3)(A) A superintendent may provide verbal notification only to school officials as necessary to implement the safety plan ordered by the court to ensure student safety.

“(B) The verbal notification shall be provided to:

“(i) Assistant principal(s);

“(ii) School counselor(s);

“(iii) School employee(s) who is primarily responsible for the juvenile’s learning environment in the school where the juvenile is currently enrolled; and

“(iv) Bus drivers, if applicable.

“(4) The principal and superintendent shall maintain a copy of the court order or information concerning the court order and safety plan under this section.

“(5) Any school official that receives a court order or information concerning the

court order and safety plan under this subsection (d) shall:

“(A) Maintain the confidentiality of and sign a statement not to disclose the information or court order and safety plan;

“(B) Include the information in the juvenile’s permanent educational records; and

“(C)(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed on January 1, 2007.

“(ii) The local education agency shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed on January 1, 2007.

“(iii) However, under no circumstances shall the local education agency release, disclose, or make available for inspection to the public, any college, university, institution of higher learning, vocational or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record.

“(6) When a student attains an age that he or she is no longer under the jurisdiction of the juvenile court, the safety plan and the order regarding the safety plan shall be removed from the school’s permanent records and destroyed.”

**Publisher’s Notes.** This section, concerning confidentiality of records, was repealed by Acts 2009, No. 956, § 22. The section was derived from Acts 1993, No. 408, § 1; 1999, No. 954, § 1; 2001, No. 1582, § 3; 2003, No. 1166, § 27; 2007, No. 49, § 1.

## CASE NOTES

**Release of Mental Evaluation Inappropriate.**

Defendant's convictions for capital murder and kidnapping were appropriate because he did not dispute a witness' status as a juvenile and it was therefore clear that this section precluded the release of that witness' mental evaluation. Defen-

dant also presented no evidence showing that the witness was subject to insane delusions or that her ability to perceive and remember was impaired; thus, the circuit court's competency ruling was not an abuse of discretion. *Gilcrease v. State*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 380 (May 21, 2009).

**9-27-353. Duties and responsibilities of custodian.**

(a) It shall be the duty of any person or agency appointed as the custodian of any juvenile in a proceeding under this subchapter to care for and maintain the juvenile and to see that the juvenile is protected, properly trained and educated, and has the opportunity to learn a trade, occupation, or profession.

(b) The custodian has the right to obtain medical care for the juvenile and to enroll the juvenile in school upon presentation of an order of custody.

(c) The custodian has the right to obtain medical and school records of any juvenile in his or her custody upon presentation of an order of custody.

(d) Any agency appointed as the custodian of a juvenile has the right to consent to the juvenile's travel on vacation or similar trips.

(e)(1) It shall be the duty of every person granted custody, guardianship, or adoption of any juvenile in a proceeding pursuant to or arising out of a dependency-neglect action under the this subchapter to ensure that the juvenile is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision, or custody of the juvenile.

(2) This section shall not be construed to prohibit these placements if the person who has been granted custody, guardianship, or adoption obtains a court order to that effect from the juvenile division of circuit court that made the award of custody, guardianship, or adoption.

(3) Failure to abide by subdivision (e)(1) of this section is punishable as a criminal offense pursuant to § 5-26-502(a)(3).

(f) The court shall not split custody, that is, grant legal custody to one (1) person or agency and grant physical custody to another person or agency.

**History.** Acts 2001, No. 1503, § 15; 2007, No. 587, § 25; 2009, No. 956, § 23.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cogni-

zable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2007 amendment added (f).

The 2009 amendment substituted "travel" for "traveling with foster parents" in (d).

**Cross References.** Interference with court-ordered custody, § 5-26-502.



**9-27-354. Progress reports on juveniles.**

(a)(1) The court may order progress reports from a service provider whenever a juvenile is placed out of home and in a setting other than a Department of Human Services foster home.

(2) The order shall:

(A) Set forth the schedule for the progress reports; and

(B) Identify the service provider responsible for submitting the progress reports.

(3) The service provider shall be provided a copy of the written court order by:

(A) Certified mail, restricted delivery; or

(B) Process server.

(4) Failure to follow the order of the court shall subject the service provider to contempt sanctions of the court.

(b) A progress report shall include, but not be limited to the:

(1) Reason for admission;

(2) Projected length of stay;

(3) Identified goals and objectives to be addressed during placement;

(4) Progress of the juvenile in meeting goals and objectives;

(5) Barriers to progress;

(6) Significant behavioral disruptions and response of provider; and

(7) Recommendations upon the juvenile's release.

(c) The service provider shall immediately report any incidents concerning the juvenile's health or safety to:

(1) The juvenile's attorney or attorney ad litem; and

(2) The custodian of the juvenile.

**History.** Acts 2003, No. 988, § 1.

**9-27-355. Placement of juveniles.**

(a) For purposes of this section, "relative" means a person within the fifth degree of kinship by virtue of blood or adoption.

(b)(1)(A) After the Department of Human Services removes a juvenile or the circuit court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency, as defined at § 9-28-402.

(B) For juveniles placed out of state, the placement shall be approved pursuant to the Interstate Compact on the Placement of Children, § 9-29-201 et seq.

(2) The court shall not specify a particular provider for placement of any foster child.

(3) When it is in the best interest of each of the juveniles, the department shall attempt to place:

(A) Siblings together while they are in foster care and adoptive placement; and

(B) The infants of a minor mother together in foster care.

(c)(1) A relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if the relative caregiver meets all relevant child protection standards and it is in the juvenile's best interest to be placed with the relative caregiver.

(2) Placement or custody of a juvenile in the home of a relative or other person shall not relieve the department of its responsibility to actively implement the goal of the case.

(3) If a relative or other person inquires about the placement of a juvenile in his or her home, the department shall discuss the following two (2) options for the placement of the juvenile:

(A) Becoming a department foster home; or

(B) Obtaining legal custody of the juvenile.

(4)(A) The juvenile shall remain in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined at § 9-28-402 until the home is opened as a regular foster home, as a provisional foster home if the person is a relative, or the court grants custody of the juvenile to the relative or person after a written approved home study is presented to the court.

(B) For placement only with a relative:

(i) The juvenile may be placed in the home of a relative on a provisional basis for up to six (6) months pending the relative's home being opened as a regular foster home;

(ii) If the relative opts to have his or her home opened as a provisional foster home, the relative shall not be paid a board payment until the relative meets all of the requirements and his or her home is opened as a regular foster home;

(iii) Until the relative's home is opened as a regular foster home, the relative may apply for and receive benefits for which the relative may be entitled due to the placement of the juvenile in the home, such as benefits under the Transitional Employment Assistance Program, § 20-76-401, and food stamps; and

(iv) If the relative's home is not fully licensed as a foster home after six (6) months of the placement of the juvenile in the home:

(a) The department shall remove the juvenile from the relative's home and close the relative's provisional foster home; or

(b) The court shall remove custody from the department and grant custody of the juvenile to the relative subject to the limitations outlined in subdivision (c)(5) of this section.

(5) If the court grants custody of the juvenile to the relative or other person:

(A)(i) The juvenile shall not be placed back in the custody of the department while remaining in the home of the relative or other person.

(ii) The juvenile shall not be removed from the custody of the relative or other person, placed in the custody of the department, and then remain or be returned to the home of the relative or other person while remaining in the custody of the department;

(B) The relative or other person shall not receive any financial assistance, including board payments, from the department, except

for financial assistance for which the relative has applied and for which the relative or other person qualifies pursuant to the program guidelines, such as the Transitional Employment Assistance Program, § 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

(C) The department shall not be ordered to pay the equivalent of board payments or adoption subsidies to the relative or other person as reasonable efforts to prevent removal of custody from the relative.

(d)(1) Juveniles who are in the custody of the department shall be allowed trial placements with parents for a period not to exceed sixty (60) days.

(2) At the end of sixty (60) days, the court shall either place custody of the juvenile with the parent, or the department shall return the juvenile to a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402(12).

(e) When a juvenile leaves the custody of the department and the court grants custody to the parent or another person, the department is no longer legal custodian of the juvenile, even if the juvenile division of circuit court retains jurisdiction.

**History.** Acts 2003, No. 1319, § 26; 2005, No. 874, § 1; 2007, No. 587, §§ 26, 27.

**Amendments.** The 2005 amendment inserted present (a); redesignated former (a)(1) and (b)-(d) as present (b)(1)(A) and (c)-(e); added (b)(1)(B); inserted “or other person” throughout present (c); rewrote (c)(3); redesignated former (c)(4) as

present (c)(4)(A); in present (c)(4)(A), deleted “relative’s” following “until the” and inserted “as a provisional foster home if the person is a relative” and “or person”; and added (c)(4)(B).

The 2007 amendment added (c)(5)(A)(ii) and made related changes; and substituted “sixty (60)” for “thirty (30)” twice in (d).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Juvenile Code, 26 U. Ark. Little Rock L. Rev. 417.

Survey of Legislation, 2005 Arkansas General Assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

### 9-27-356. Juvenile sex offender assessment and registration.

(a) If a juvenile is an adjudicated delinquent for any of the following offenses, the court shall order a sex offender screening and risk assessment:

(1) Rape, § 5-14-103;

(2) Sexual assault in the first degree, § 5-14-124;

(3) Sexual assault in the second degree, § 5-14-125;

(4) Incest, § 5-26-202; or

(5) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303.

(b)(1) The court may order a sex offender screening and risk assessment if a juvenile is adjudicated delinquent for any offense with an underlying sexually motivated component.



(2) The court may require that a juvenile register as a sex offender upon recommendation of the Sex Offender Assessment Committee and following a hearing as set forth in subsection (e) of this section.

(c) The juvenile division of circuit court judge may order reassessment of the sex offender screening and risk assessment by the committee at any time while the court has jurisdiction over the juvenile.

(d) Following a sex offender screening and risk assessment, the prosecutor may file a motion to request that a juvenile register as a sex offender at any time while the court has jurisdiction of the delinquency case if a juvenile is found delinquent for any of the offenses listed in subsection (a) of this section.

(e)(1) The court shall conduct a hearing within ninety (90) days of the registration motion.

(2)(A) The juvenile defendant shall be represented by counsel, and the court shall consider the following factors in making its decision to require the juvenile to register as a delinquent sex offender:

- (i) The seriousness of the offense;
- (ii) The protection of society;
- (iii) The level of planning and participation in the alleged offense;
- (iv) The previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses;

(v) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;

(vi) The sex offender assessment and any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(vii) Any other factors deemed relevant by the court.

(B) However, under no circumstances shall the exercise by the juvenile of the right against self-incrimination, the right to an adjudication hearing or appeal, the refusal to admit to an offense for which he or she was adjudicated delinquent, or the refusal to admit to other offenses in the assessment process be considered in the decision whether to require registration.

(f)(1) The court shall make written findings on all the factors in subsection (e) of this section.

(2) Upon a finding by clear and convincing evidence that a juvenile should or should not be required to register as a sex offender, the court shall enter its order.

(g) When the juvenile division of circuit court judge orders a juvenile to register as a sex offender, the judge shall order either the Division of Youth Services of the Department of Human Services or a juvenile probation officer to complete the registration process by:

- (1) Completing the sex offender registration form;
- (2) Providing a copy of the sex offender registration order, fact sheet, registration form, and the Juvenile Sex Offender Rights and Responsibilities Form to the juvenile and the juvenile's parent, guardian, or

custodian and explaining this information to the juvenile and the juvenile's parent, guardian, or custodian;

(3) Mailing a copy of the registration court order, fact sheets, and registration form to the Arkansas Crime Information Center, Sex Offender Registry Manager, One Capitol Mall 4D-200, LR, AR 72201;

(4) Providing local law enforcement agencies where the juvenile resides a copy of the sex offender registration form; and

(5) Ensuring that copies of all documents are forwarded to the court for placement in the court file.

(h) The juvenile may petition the court to have his or her name removed from the sex offender register at any time while the court has jurisdiction over the juvenile or when the juvenile turns twenty-one (21) years of age, whichever is later.

(i) The juvenile division of circuit court judge shall order the juvenile's name removed from the sex offender register upon proof by a preponderance of the evidence that the juvenile does not pose a threat to the safety of others.

(j) If the court does not order the juvenile's name removed from the sex offender register, the juvenile shall remain on the sex offender register for ten (10) years from the last date on which the juvenile was adjudicated a delinquent or found guilty as an adult for a sex offense or until the juvenile turns twenty-one (21) years of age, whichever is longer.

(k) Once a juvenile is ordered to register as a sex offender, he or she shall be subject to the registration requirements set forth in §§ 12-12-904, 12-12-906, 12-12-908, 12-12-909, and 12-12-912.

**History.** Acts 2003, No. 1265, § 1; 2005, No. 1191, § 10.

**Amendments.** The 2005 amendment inserted "or found guilty" in (j).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General As-

sembly, Family Law, Juvenile Sex Offenders, 26 U. Ark. Little Rock L. Rev. 419.

## CASE NOTES

### Registration Proper.

Finding that the juvenile needed to register as a sexual offender was proper pursuant to subsection (e) of this section where his multiple sexual offenses were serious and where he had exhibited ma-

nipulative behavior by infiltrating his best friend's family and then sexually abusing their daughter; further, the juvenile's level of planning and participation weighed against him. *L.W. v. State*, 89 Ark. App. 318, 202 S.W.3d 552 (2005).

## 9-27-357. Deoxyribonucleic acid samples.

(a) A person who is adjudicated delinquent for the following offenses shall have a deoxyribonucleic acid sample drawn:

(1) Rape, § 5-14-103;

(2) Sexual assault in the first degree, § 5-14-124;

(3) Sexual assault in the second degree, § 5-14-125;

- (4) Incest, § 5-26-202;
- (5) Capital murder, § 5-10-101;
- (6) Murder in the first degree, § 5-10-102;
- (7) Murder in the second degree, § 5-10-103;
- (8) Kidnapping, § 5-11-102;
- (9) Aggravated robbery, § 5-12-103; and
- (10) Terroristic act, § 5-13-310.

(b) The court shall order a fine of two hundred fifty dollars (\$250) unless the court finds that the fine would cause an undue hardship.

(c)(1) A juvenile adjudicated delinquent for one (1) of the offenses listed in subsection (a) of this section shall have a deoxyribonucleic acid sample drawn upon intake at a juvenile detention facility or intake at a Division of Youth Services of the Department of Human Services facility.

(2) If the juvenile is not placed in a facility, the juvenile probation officer to whom the juvenile is assigned shall ensure that the deoxyribonucleic acid sample is drawn.

(d) All deoxyribonucleic acid samples taken under this section shall be taken in accordance with regulations promulgated by the State Crime Laboratory.

**History.** Acts 2003, No. 1265, § 5[4].

**A.C.R.C. Notes.** Acts 2003, No. 1265 did not contain a Section 3.

#### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Juvenile Sex Offenders, 26 U. Ark. Little Rock L. Rev. 419.

#### 9-27-358. [Repealed.]

**Publisher's Notes.** This section, concerning placement, staffing and planning, was repealed by Acts 2005, No. 1191, § 7. The section was derived from Acts 2003, No. 1809, § 17.

#### 9-27-359. Fifteenth-month review hearing.

(a) A hearing shall be held to determine whether the Department of Human Services shall file a petition to terminate parental rights if:

(1) A juvenile has been in an out-of-home placement for fifteen (15) continuous months, excluding trial placements and time on runaway status; and

(2) The goal at the permanency planning hearing was either:

(A) Reunification; or

(B) Another planned permanent living arrangement.

(b) The circuit court shall authorize the department to file a petition to terminate parental rights unless:

(1)(A) The child is being cared for by a relative or relatives; and

(B) Termination of parental rights is not in the best interest of the child;



(2)(A) The department has documented in the case plan a compelling reason why filing a petition is not in the best interest of the child; and

(B) The court approves the compelling reason as documented in the case plan; or

(3) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, the services the department deemed necessary for the safe return of the child to the child's home if reunification services were required to be made to the family.

(c) If the court determines the permanency goal to be termination of parental rights, the department shall file the petition to terminate parental rights no later than the fifteenth month of the child's entry into foster care.

(d) If the court finds that the juvenile should remain in an out-of-home placement, either long-term or otherwise, the juvenile's case shall be reviewed every six (6) months, with an annual permanency planning hearing.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

**History.** Acts 2005, No. 1191, § 5.

### **9-27-360. Review of termination of parental rights.**

(a) After an order of termination of parental rights, the circuit court shall review the case following the termination hearing at least every six (6) months until permanency is achieved, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(b) The court shall determine and shall include in its orders whether:

(1) The case plan, services, and current placement meet the juvenile's special needs and best interest, with the juvenile's health, safety, and educational needs specifically addressed;

(2) The Department of Human Services has made reasonable efforts to finalize a permanency plan for the juvenile; and

(3) The case plan is moving toward an appropriate permanent placement for the juvenile.

(c) In making its findings, the court shall consider the extent of the compliance of the department and the juvenile with the case plan and court orders to finalize the permanency plan.

(d) A written order shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

**History.** Acts 2005, No. 1191, § 5;  
2007, No. 587, § 28.

**Amendments.** The 2007 amendment,  
in (a), deleted "every three (3) months

when the goal is adoption and in other cases" following "at least" and added "and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile."

### **9-27-361. Court reports.**

(a)(1) Seven (7) business days prior to a scheduled dependency-neglect review hearing, including the fifteenth-month review hearing and any post-termination of parental rights hearing, the Department of Human Services and a court-appointed special advocate, if appointed, shall file with the juvenile division of circuit court a review report including a certificate of service that the report has been distributed to all the parties or their attorneys and the court-appointed special advocate, if appointed.

(2)(A) The court report prepared by the department shall include a summary of the compliance of the parties with the court orders and case plan, including the description of the services and assistance the department has provided and recommendations to the court.

(B) In cases in which a child has been returned home, the department's review report shall include a description of any services needed by and requirements of the parent or parents, including, but not limited to, a safety plan to ensure the health and safety of the juvenile in the home.

(C)(i) In cases in which a juvenile has been transferred to the custody of the department, the department's court report shall outline the efforts made by the department to identify and notify adult grandparents and other adult relatives that the juvenile is in the custody of the department.

(ii) The department's court report shall list all adult grandparents and other adult relatives notified by the department and the response of each adult grandparent or other adult relative to the notice, including:

(a) The adult grandparent or other adult relative's interest in participating in the care and placement of the juvenile;

(b) Whether the adult grandparent or other adult relative is interested in becoming a provisional foster parent or foster parent of the juvenile;

(c) Whether the adult grandparent or other adult relative is interested in kinship guardianship, if funding is available; and

(d) Whether the adult grandparent or other adult relative is interested in visitation.

(3) The report prepared by the court-appointed special advocate shall include, but is not limited to:

(A) Any independent factual information that he or she feels is relevant to the case;

(B) A summary of the compliance of the parties with the court orders;

(C) Any information on adult relatives, including their contact information and the volunteer's recommendation about relative placement and visitation; and

(D) Recommendations to the court.

(4)(A) At a review hearing, the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

(b)(1) Seven (7) business days prior to a scheduled dependency-neglect permanency planning hearing, the department and the court-appointed special advocate, if appointed, shall file with the court a permanency planning court report that includes a certificate of service that establishes that the report has been distributed to all of the parties or their attorneys and the court-appointed special advocate, if appointed.

(2) The permanency planning court report prepared by the department shall include, but not be limited to, the following:

(A) A summary of the compliance of the parties with the court orders and case plan, including the description of the services and assistance the department has provided;

(B) A list of all the placements in which the juvenile has been;

(C) A recommendation and discussion regarding the permanency plan including:

(i) The appropriateness of the plan;

(ii) A timeline; and

(iii) The steps and services necessary to achieve the plan, including the persons responsible; and

(D) The location of any siblings, and if separated, a statement for the reasons for separation and any efforts to reunite or maintain contact if appropriate and in the best interest of the siblings.

(3) The report prepared by the court-appointed special advocate shall include, but is not limited to:

(A) Any independent factual information that he or she feels is relevant to the case;

(B) A summary of the compliance of the parties with the court orders;

(C) Any information on adult relatives, including their contact information and the volunteer's recommendation about relative placement and visitation; and

(D) The recommendations to the court.

(4)(A) At the permanency planning hearing, the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

(c)(1) Nothing in this section shall prevent the department or the court-appointed special advocate from filing a report with the court and providing it to all parties or their attorneys at least seven (7) business days prior to any scheduled dependency-neglect hearing or presenting any subsequent or addendum reports to the court during a hearing.



(2)(A) The court shall determine on the record whether the reports or addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report or an addendum report that was not admitted into evidence on the record.

**History.** Acts 2005, No. 1191, § 5; 2007, No. 587, § 29; 2009, No. 1311, §§ 2-4.

The 2009 amendment inserted (a)(2)(C), (a)(3)(C), and (b)(3)(C), redesignated subdivisions accordingly, and made related changes.

**Amendments.** The 2007 amendment inserted “or addendum reports” in (c)(2)(A) and “or an addendum report” in (c)(2)(B).

### 9-27-362. Emancipation of juveniles.

(a) A petition for emancipation may be filed in a circuit court by any party to a dependency-neglect, dependency, family in need of services, or delinquency case.

(b) The petition shall be served along with a notice of hearing to the juvenile’s parent, legal guardian, or legal custodian.

(c) The circuit court may emancipate a juvenile in a dependency-neglect, dependency, family in need of services, or delinquency case.

(d)(1) The court may emancipate the juvenile after a hearing on the petition if the petitioner shows by a preponderance of the evidence that:

(A) The juvenile is at least seventeen (17) years of age;

(B) The juvenile is willing to live separate and apart from his or her parent, legal guardian, or legal custodian;

(C) The juvenile has an appropriate place to live;

(D) The juvenile has been managing or has the ability to manage his or her own financial affairs;

(E) The juvenile has a legal source of income, such as employment or a trust fund;

(F) The juvenile has health care coverage or a realistic plan on how to meet his or her health needs;

(G) The juvenile agrees to comply with the compulsory school attendance laws; and

(H) Emancipation is in the best interest of the juvenile.

(2) The court shall consider the wishes of the parent, legal guardian, or legal custodian in making its decision.

(3) If the juvenile has an attorney ad litem, the court shall consider the recommendation of the attorney ad litem.

(e) An order of emancipation has the following effects:

(1) The juvenile has the right to obtain and consent to all medical care, including counseling;

(2) The juvenile has the right to enter into contracts;

(3) The juvenile has the right to enroll himself or herself in school, college, or other educational programs;

(4) The juvenile has the right to obtain a driver's license without consent of a parent or other adult so long as the juvenile complies with the remaining requirements of the driver's license law;

(5) The juvenile's parent, legal guardian, or legal custodian is no longer legally responsible for the juvenile;

(6) The juvenile may still be charged with a delinquency and prosecuted in juvenile court;

(7) The juvenile may not marry without parental permission pursuant to § 9-11-102;

(8) The juvenile is not relieved from compulsory school attendance;

(9) The department is not relieved from the responsibility of providing independent living services and funding for which the juvenile is eligible upon request by the juvenile;

(10) Child support orders are not terminated but may cease upon entry of an order from the court that issued the order of child support;

(11) Until the juvenile reaches the age of majority, the juvenile remains eligible for federal programs and services as a juvenile;

(12) The juvenile is not permitted to obtain items prohibited for sale to or possession by a minor, such as tobacco or alcohol;

(13) The juvenile remains subject to state and federal laws enacted for the protection of persons under eighteen (18) years of age such as the prohibition against a juvenile's obtaining a tattoo; and

(14) No statute of limitations is affected.

**History.** Acts 2005, No. 1990, § 19; 2009, No. 956, § 24.

**Amendments.** The 2009 amendment substituted "by any party" for "by the attorney or the attorney ad litem for a

juvenile who is in the custody of the Department of Human Services pursuant" in

(a); inserted "or delinquency case" in (a) and (c); and made related and minor stylistic changes.

### 9-27-363. Foster youth transition.

(a) The General Assembly finds that:

(1) Every juvenile in foster care should have a family for a lifetime. However, the reality is that too many juveniles who are in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;

(2) A child in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future;

(3) The Department of Human Services shall:

(A) Include the child in the process of developing a plan to transition the child into adulthood;

(B) Empower the child with information about all of the options and services available;

(C) Provide the child with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter into adulthood;

(D) Assist the child in developing and maintaining healthy relationships with nurturing adults who can be a resource and positive guiding influence in his or her life after he or she leaves foster care; and

(E) Provide the child with basic information and documentation regarding his or her biological family and personal history.

(b) The department shall develop a transitional plan with every juvenile in foster care not later than the juvenile's seventeenth birthday or within ninety (90) days of entering a foster care program for juveniles who enter foster care at seventeen (17) years of age or older. The plan shall include but not be limited to written information and confirmation concerning:

(1) The juvenile's right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services, including but not be limited to the John H. Chafee Foster Care Independence Program and other transitional services; and

(2) The juvenile's case, including his or her biological family, foster care placement history, tribal information if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to siblings would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as a resource to the juvenile based on his or her best interests.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

(1) Social security card;

(2) Certified birth certificate or verification of birth record, if available or should have been available to the department;

(3) Family photos in the possession of the department;

(4)(A) All the juvenile's health records for the time the juvenile was in foster care and any other medical records that were available or should have been available to the department.



(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private; and

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department.

(f) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(g) The department shall not request a circuit court to close a family in need of services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(h) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

(i)(1) A circuit court shall continue jurisdiction over a juvenile who has reached eighteen (18) years of age to ensure compliance with this section.

(2) This section does not limit the discretion of a circuit court to continue jurisdiction for other reasons as provided for by law.

(3) A court may terminate jurisdiction upon a showing that:

(A) The department has complied with this section; or

(B) The juvenile has refused the services.

**History.** Acts 2009, No. 391, § 1.

## **9-27-364. Division of Youth Services aftercare.**

(a)(1) After an adjudication of delinquency and upon commitment to the Division of Youth Services of the Department of Human Services, the court may order compliance with a division aftercare plan upon a juvenile's release from the division, if recommended as part of the treatment plan submitted to the court.

(2) The division or its designee shall provide the terms and conditions of the aftercare plan in writing to the juvenile before the juvenile's release from the division.

(3) The division or its designee shall provide the aftercare terms and conditions to the juvenile's attorney and the juvenile's legal parent, guardian, or custodian by the division or its designee, the prosecutor, and the committing court before the juvenile's release from the division.

(4) The division or its designee shall explain the terms of the aftercare plan to the juvenile and his or her legal parent, guardian, or custodian before the juvenile's release from the division.

(b)(1) Any violation of an aftercare term may be reported to the prosecuting attorney, who may initiate a petition in the committing court for violation of the aftercare plan.

(2) The department may also initiate a petition for a violation with the committing court.

(c) The petition shall contain specific factual allegations constituting each violation of the aftercare plan and shall be served upon the juvenile, his or her attorney, his or her parent, guardian, or custodian, and the prosecuting attorney if filed by the department.

(d) A hearing shall be set within a reasonable time after the filing of the petition or within fourteen (14) days if the juvenile has been detained as a result of the filing of the petition for the aftercare violation.

(e) If the court finds by a preponderance of the evidence that the juvenile violated the terms of the aftercare plan, the court may:

(1) Extend the terms of the aftercare plan, if requested by the division;

(2) Impose additional conditions to the aftercare plan, if requested by the division; or

(3) Make any disposition that could have been made at the time commitment was ordered under § 9-27-330.

**History.** Acts 2009, No. 956, § 25.

### **9-27-365. No reunification hearing.**

(a)(1)(A) Any party can file a motion for no reunification services at any time.

(B) The motion shall be provided to all parties in writing at least fourteen (14) days before a scheduled hearing.

(C) The court may conduct a hearing immediately following or concurrent with an adjudication determination or at a separate hearing if proper notice has been provided.

(2) The motion shall identify sufficient facts and grounds in sufficient detail to put the defendant on notice as to the basis of the motion for no reunification services.

(3)(A) A response is not required.

(B) If a party responds, the time for response shall not be later than ten (10) days after receipt of the motion.

(b)(1) The court shall conduct and complete a no reunification hearing within fifty (50) days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided.

(2) Upon good cause shown, the hearing may be continued for an additional twenty (20) days.

(c) An order terminating reunification services on a party and ending the Department of Human Services' duty to provide services to a party shall be based on a finding of clear and convincing evidence that:

(1) The termination of reunification services is in the child's best interest; and

(2) One (1) or more of the following grounds exist:

(A) A circuit court has determined that the parent has subjected the child to aggravated circumstances that include:

(i) A child being abandoned;

- (ii) A child being chronically abused;
- (iii) A child being subjected to extreme or repeated cruelty or sexual abuse;
- (iv) A determination by a circuit judge that there is little likelihood that services to the family will result in successful reunification; or
- (v) A child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three (3) or more times in the past fifteen (15) months; or
- (B) A circuit court has determined that the parent has:
  - (i) Committed murder of a child;
  - (ii) Committed manslaughter of a child;
  - (iii) Aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter;
  - (iv) Committed a felony battery that results in serious bodily injury to any child;
  - (v) Had parental rights involuntarily terminated as to a sibling of the child; or
  - (vi) Abandoned an infant as defined in § 9-27-303(1).
- (d) Upon a determination that no reunification services shall be provided, the court shall hold a permanency planning hearing within thirty (30) days unless permanency for the juvenile has been achieved through guardianship, custody, or a petition for termination of parental rights has been filed within thirty (30) days.
- (e) A written order setting forth the court's findings of fact and law shall be filed with the court, by the court, or by a party or party's attorneys as designated by the court within thirty (30) days or before the next hearing, whichever is sooner.

**History.** Acts 2009, No. 956, § 26.

### **9-27-366. Confessions.**

In determining whether a juvenile's confession was voluntarily, knowingly, and intelligently made, the court shall consider all circumstances surrounding the confession, including without limitation the following:

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the confession;
- (3) In cases in which the custodial parent, guardian, or custodian agreed to the interrogation that led to the confession, whether the custodial parent, guardian, or custodian understood the consequences of the confession or has an interest in the matter that is adverse to the juvenile;
- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the confession was the result of any coercion, force, or inducement;



(6) Whether the juvenile and his or her custodial parent, guardian, or custodian had waived the right to counsel or been provided counsel; and

(7) Whether any of the following occurred:

(A) The oral, written, or sign language confession was electronically recorded in its entirety;

(B) The entire interrogation was electronically recorded;

(C) The audio or video recordings of the interrogation, if available, were used; and

(D) All of the voices on the recording are identified and the names of all persons present during the interrogation are identified.

**History.** Acts 2009, No. 759, § 1.

#### SUBCHAPTER 4 — DIVISION OF DEPENDENCY-NEGLECT REPRESENTATION

##### SECTION.

9-27-401. Creation — Representation for children and parents.

##### SECTION.

9-27-402. Case plans.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes “all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts....”

**Effective Dates.** Acts 1997, No. 1227, § 19: Apr. 7, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an important public interest in providing quality representation to juveniles and parents in dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is further determined that children are the state’s most treasured future resource and recent studies indicate that children and their parents have not always received quality representation and sometimes have gone without representation in dependency-neglect proceedings in the past because the counties of Arkansas have been unable to provide adequate representation due to lack of funding and uniform application of the law. To insure the best interests of Arkansas’ children in achieving a safe and permanent home, to comply with federal law mandating appointment of guardians ad litem in dependency-neglect cases, and

to prevent the loss of federal funding, a statewide system for quality dependency-neglect representation must be established. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 401, § 20: Mar. 4, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that in November, 1997, the United States Congress passed Public Law 105-89, the Adoption and Safe Families Act. The primary emphasis of the act is ensuring that the health and safety of children is the paramount concern by the child welfare agency and the court in making decisions about the life of a child. The requirements in this state law are a requirement for continued federal funding of child welfare services in Arkansas. Therefore, an emergency is declared to exist and this act being immediately

necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 708, § 7: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the effectiveness of this act on July 1, 1999 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public

peace, health and safety shall become effective on July 1, 1999."

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

#### RESEARCH REFERENCES

**A.L.R.** Tort liability of public authority neglected children from parent. 60 for failure to remove parentally abused or A.L.R.4th 942.

#### 9-27-401. Creation — Representation for children and parents.

(a) There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts that will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.

(b)(1) The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.

(2)(A) Before employing or entering into a contract or contracts, the office shall consult with the judge or judges of the circuit court designated to hear dependency-neglect cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, in each judicial district in accordance with the provisions of § 19-11-1001 et seq.

(B) Those obtaining employment or contracts through the office as described in subdivision (b)(3) of this section will be designated as the providers for representation of children in dependency-neglect cases in each judicial district.

(3)(A) The office shall advertise employment and contract opportunities.

(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Judges Committee of the Arkansas Judicial Council.

(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases.

(5)(A)(i) In the transition to a state-funded system of dependency-neglect representation, it is the intent of the General Assembly to provide an appropriate and adequate level of representation to all children in dependency-neglect proceedings as required under federal and state law pursuant to § 9-27-316.

(ii)(a) It is recognized by the General Assembly that in many areas of the state, resources have not been available to support the requirement of representation for children at the necessary level.

(b) It is also recognized, however, that in other areas a system has been developed that is appropriately and successfully serving children and the courts.

(iii) With the transition to state funding, it is not the intent of the General Assembly to adversely affect these systems that are working well or to put into place a system that is too inflexible to respond to local needs or restrictions.

(B) In its administration of the system, therefore, the office is charged with the authority and responsibility to establish and maintain a system that:

(i) Equitably serves all areas of the state;

(ii) Provides quality representation;

(iii) Makes prudent use of state resources; and

(iv) Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases.

(c) The director is authorized to:

(1) Establish a statewide court-appointed special advocate program;

(2) Provide grants or contracts to local court-appointed special advocate programs; and

(3) Work with judicial districts to establish local programs by which circuit courts may appoint trained volunteers to provide valuable information to the courts concerning the best interests of children in dependency-neglect proceedings.

(d)(1) The director is authorized to establish a program to represent indigent parents or guardians in dependency-neglect cases.

(2) The court shall appoint counsel in compliance with federal law, § 9-27-316(h), and Supreme Court Administrative Order Number 15 in all proceedings to remove custody or to terminate parental rights.

(3)(A) When attorneys are appointed under subdivision (d)(2) of this section, court-appointed attorney fees and reasonable expenses shall be reimbursable as set forth in the office reimbursement guidelines



that shall include contracts with attorneys for such fees and reasonable expenses.

(B) Funding for contracts shall be administered from the state, or funds shall be provided to the judicial district for the county to administer the contracts.

(C) All contracts shall be paid from funds appropriated for the purpose of this section.

(4) When a court orders the payment of funds for the fees and expenses authorized by this subsection, the attorney shall transmit a copy of the order to the office or county authorized to pay the funds.

(5) The court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid under this section.

(7) In order to ensure that each judicial district will have an appropriate amount of funds to utilize indigent parent or guardian representation in dependency-neglect cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the committee.

(8) The office shall not be liable directly to any attorney or indirectly to the Arkansas State Claims Commission for the payment of attorney's fees or expenses except to the extent specific funding is appropriated and available for the purpose of providing indigent parent counsel in dependency-neglect cases.

**History.** Acts 1997, No. 1227, § 14; 1999, No. 708, § 1; 2001, No. 987, § 6; 2001, No. 1267, § 1; 2003, No. 1166, § 28; 2003, No. 1315, § 1; 2007, No. 587, § 30.

**A.C.R.C. Notes.** Acts 2009, No. 1424, § 24, provided: "CONTRACTING WITH PUBLIC DEFENDERS. The Administrative Office of the Courts Division of Dependency-Neglect Representation shall have the authority to enter into a Professional Services Agreement with a person who is serving as a part-time Public Defender or other part-time State Attorney and paid as an employee of the State of Arkansas when the Public Defender or other part-time State Attorney has been appointed to provide Dependency-Neglect Services by a Circuit Judge. The part-time Public Defender or other part-time State Attorney

shall be eligible for additional compensation which shall not be construed as exceeding the line item maximum for the grade of that position when the Administrative Office of the Courts reimburses the part-time Public Defender or other part-time State Attorney for Dependency-Neglect Representation services performed.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

**Amendments.** The 2007 amendment inserted "and Supreme Court Administrative Order Number 15" in (d)(2); deleted former (d)(3) and redesignated the remaining subsections accordingly and made a related change; rewrote present (d)(3); substituted "or county" for "which is" in (d)(4); and added (d)(8).

## 9-27-402. Case plans.

(a) A case plan shall be developed in all dependency-neglect cases or any case involving an out-of-home placement. The Department of Human Services shall be responsible for developing case plans in all dependency-neglect cases, and in family in need of services or delin-

quency cases when custody is transferred to the department, pursuant to § 9-27-328. The case plan shall be:

(1)(A) Developed in consultation with the juvenile's parent, guardian, or custodian and, if appropriate, the juvenile, the juvenile's foster parents, the court-appointed special advocate, the juvenile's attorney ad litem, and all parties' attorneys.

(B) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available. The department shall then prepare a case plan conforming as nearly as possible with the requirements set forth in this section.

(C) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan;

(2)(A) Developed and filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(B) If the department does not have sufficient information prior to the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(C) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing;

(3) Signed by and distributed to all parties, and distributed to the juvenile's attorney ad litem, court-appointed special advocate, and foster parents, if available; and

(4)(A) Subject to modification based on changing circumstances.

(B) All parties to the case plan shall be notified of any substantive change to the case plan.

(C) A substantive change to a case plan includes, but is not limited to, such changes as the placement of the juvenile, the visitation rights of any party, or the goal of the plan.

(b) When the juvenile is receiving services in the home of the parent, guardian, or custodian, the case plan shall include at a minimum, in addition to the requirements in subsection (a) of this section:

(1) A description of the problems being addressed;

(2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;

(3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act of 1990 to assure to all the parents meaningful access to reunification and family preservation services;

(4) The name of an individual who the petitioner, parent, guardian, or custodian knows is claiming to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and

(5) A description of how the juvenile's health and safety will be protected.

(c) When the juvenile is receiving services in an out-of-home placement, the case plan must include at a minimum, in addition to the requirements in subsections (a) and (b) of this section:

(1)(A) A description of the permanency goal.

(B) If the goal at the permanency planning and fifteenth-month hearing is not adoption, the department shall document in the case plan a compelling reason why filing a petition to terminate parental rights is not in the best interest of the juvenile;

(2) The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian that necessitated removal of the juvenile and the remediation of which will determine the return of the juvenile to the home;

(3) A description of the type of out-of-home placement selected for the juvenile, including a discussion of the appropriateness of the placement;

(4) A plan for addressing the needs of the juvenile while in the placement, with emphasis on the health and safety safeguards in place for the child, including a discussion of the services provided within the last six (6) months;

(5)(A) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken.

(B) The plan may include any person or agency who shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile;

(6) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;

(7) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services, the purposes of which shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life when possible, and promote the reunification of the juvenile with the parent, guardian, or custodian;

(8) To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. § 675(1);

(9) A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;

(10)(A) A description of the location of siblings.

(B) If siblings have been separated, a statement of the reasons for separation and the efforts that have been and will be made to enable the siblings to maintain regular contact while separated and to be reunited as soon as possible;



(11) When appropriate for a juvenile sixteen (16) years of age and over, the case plan must also include a written description of the programs and services that will help the juvenile prepare for the transition from foster care to independent living;

(12) A written notice to the parent or parents that failure of the parent or parents to comply substantially with the case plan may result in the termination of parental rights and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself;

(13)(A) As required by § 9-27-103, a plan for ensuring the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity of the school in which the child is enrolled at the time of placement; and

(B)(i) An assurance that the department has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or

(ii) If remaining in the school is not in the best interest of the child, assurances by the department and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school; and

(14) As required by § 9-27-363, the department in conjunction with other representatives of the juvenile shall provide the juvenile with assistance and support in developing a transition plan that is personalized at the direction of the juvenile and includes specific options on housing, health insurance, educational opportunities, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as the juvenile may elect.

(d) The case plan is subject to court approval upon review by the court.

(e) A parent's, guardian's, or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect.

**History.** Acts 1997, No. 1227, § 8; 1999, No. 401, § 16; 2009, No. 956, § 27.

**Amendments.** The 2009 amendment inserted (c)(1)(B) and redesignated the existing text of (c)(1) accordingly; added (c)(13) and (c)(14); and made related changes.

**U.S. Code.** The Americans with Disabilities Act of 1990, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

CASE NOTES

ANALYSIS

Record on Appeal.  
Trial Proceedings.

Record on Appeal.

In a termination of parental rights appeal, under Ark. Sup. Ct. & Ct. App. R. 3-1 and 3-2, the “entire record” could be properly prepared and transmitted by the circuit clerk without including the case plan, even though the plan had in fact been filed in accordance with subdivision (c)(5)(A) of this section; it was the mother’s burden to bring up an adequate record for review and, because the record omitted the case plan, the court could not review the moth-

er’s due process claim. *Rodriguez v. Ark. Dep’t of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004).

Trial Proceedings.

In a termination of parental rights case, where the Department of Human Services (DHS) failed to introduce the case plan into the record at the trial, the case plan could not be introduced by the DHS as part of the record on appeal and could not be considered on appeal; consequently, reversal was necessary. *Rodriguez v. Ark. Dep’t of Human Servs.*, 84 Ark. App. 177, 137 S.W.3d 432 (2003).

**Cited:** *Jones v. Ark. Dep’t of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

SUBCHAPTER 5 — EXTENDED JUVENILE JURISDICTION

SECTION.

- 9-27-501. Extended juvenile jurisdiction designation.
- 9-27-502. Competency — Fitness to proceed — Lack of capacity.
- 9-27-503. Designation hearing.
- 9-27-504. Right to counsel.
- 9-27-505. Extended juvenile jurisdiction adjudication.
- 9-27-506. Extended juvenile jurisdiction disposition hearing.

SECTION.

- 9-27-507. Extended juvenile jurisdiction court review hearing.
- 9-27-508. Extended juvenile jurisdiction records.
- 9-27-509. Division of Youth Services — Commitment of extended juvenile jurisdiction juveniles.
- 9-27-510. Department of Correction — Placement.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes “all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts....”

9-27-501. Extended juvenile jurisdiction designation.

(a) The state may request an extended juvenile jurisdiction designation in a delinquency petition or file a separate motion if the:

(1) Juvenile, under thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2)(A) Juvenile, thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(B) However, juveniles thirteen (13) years of age at the time of the alleged offense shall have an evaluation to § 9-27-502, and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity;

(3) Juvenile, fourteen (14) or fifteen (15) years of age at the time of the alleged offense, is charged with any of the crimes listed in §§ 9-27-318(b)(1) and 9-27-318(c)(2); or

(4) Juvenile, sixteen (16) or seventeen (17) years of age at the time of the alleged offense, is charged with any of the crimes listed in §§ 9-27-318(b)(1) and 9-27-318(c)(2).

(b) The juvenile's attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to subsection (a) of this section.

**History.** Acts 1999, No. 1192, § 1; 2003, No. 1809, § 13.

**A.C.R.C. Notes.** As enacted, subdivision (a)(3) ended "as amended by this act."

#### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Tanner, Arkansas' Extended Juvenile Jurisdiction Act: The Balance of Offender Rehabilita-

tion and Accountability, 22 U. Ark. Little Rock L. Rev. 647.

#### CASE NOTES

**Cited:** Barton v. State, 366 Ark. 339, 235 S.W.3d 511 (2006).

#### 9-27-502. Competency — Fitness to proceed — Lack of capacity.

(a) Except as provided by subsection (b) of this section, the provisions of § 5-2-301 et seq. shall apply to the following:

(1) In any juvenile delinquency proceeding in which the juvenile's fitness to proceed is put in issue by any party or the court; and

(2) In juvenile delinquency proceedings in which extended juvenile jurisdiction designation has been requested by any party and a party intends to raise lack of capacity as an affirmative defense.

(b)(1)(A) For a juvenile under thirteen (13) years of age at the time of the alleged offense and who is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, there shall be a presumption that:

(i) The juvenile is unfit to proceed; and

(ii) He or she lacked capacity to:

(a) Possess the necessary mental state required for the offense charged;

(b) Conform his or her conduct to the requirements of law; and

(c) Appreciate the criminality of his or her conduct.



(B) The prosecution must overcome these presumptions by a preponderance of the evidence.

(2)(A) For such juveniles under thirteen (13) years of age and who are charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, the court shall order an evaluation to be performed in accordance with § 5-2-305(b) by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles.

(B) Upon an order for evaluation, all proceedings shall be suspended and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(3) The court shall require the prosecuting attorney to provide to the examiner any information relevant to the evaluation, including, but not limited to:

(A) The names and addresses of all attorneys involved;

(B) Information about the alleged offense; and

(C) Any information about the juvenile's background that the prosecutor deems relevant.

(4) The court may require the attorney for the juvenile to provide any available information relevant to the evaluation, including, but not limited to:

(A) Psychiatric records;

(B) School records; and

(C) Medical records.

(5) All information required under subdivisions (b)(3) and (4) of this section must be provided to the examiner within ten (10) days after the court order for the evaluation and, when possible, this information shall be received prior to the juvenile's admission to the facility providing the inpatient evaluation.

(6) In assessing the juvenile's competency, the examiner shall:

(A)(i) Obtain and review all records pertaining to the juvenile.

(ii) This should include the information in subdivisions (b)(3) and (4) of this section and any other relevant records;

(B) Consider the social, developmental, and legal history of the juvenile, as related by the juvenile and a parent or guardian, and any other relevant source;

(C) Consider the current alleged offense;

(D) Conduct a competence abilities interview of the juvenile;

(E) Conduct an age-appropriate mental status exam using tests designed for juveniles;

(F) Conduct an age-appropriate psychological evaluation using tests designed for juveniles; and

(G) Consider any other relevant test or information.

(7)(A) Evaluations shall be filed with the court and distributed to the parties within ninety (90) days from the date of the order requesting the evaluation.

(B) All such reports shall be filed under seal with the court and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(C) The report shall include, but not be limited to, the following:

(i) Identification of the juvenile and the charges;  
(ii) Listing of assessment methods used;  
(iii) Description of what the juvenile was told about the purpose of the evaluation;

(iv) Social, clinical, and developmental history and the sources from which this information was obtained;

(v) Mental status data, including any psychological testing conducted and results;

(vi) Comprehensive intelligence testing;

(vii) Competence data assessing the competence-to-stand-trial abilities;

(viii) Interpretation of the data, including clinical or developmental explanations for any serious deficits in competence abilities;

(ix)(a) An opinion as to the juvenile's fitness to proceed.

(b) In reaching this opinion, the examiner shall consider and make written findings regarding the following:

(1) Do the juvenile's capabilities entail:

(A) An ability to understand and appreciate the charges and their seriousness;

(B) An ability to understand and realistically appraise the likely outcomes;

(C) A reliable episodic memory so that he or she can accurately and reliably relate a sequence of events;

(D) An ability to extend thinking into the future;

(E) An ability to consider the impact of his or her actions on others;

(F) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner; and

(G) Logical decision-making abilities, particularly multifactored problem solving or the ability to take several factors into consideration in making a decision; and

(2) Developmentally, does the juvenile have:

(A) An ability to understand the charges;

(B) An ability to understand the roles of participants in the trial process, i.e., judge, defense attorney, prosecutor, witnesses, and jury and understand the adversarial nature of the process;

(C) An ability to adequately trust and work collaboratively with his or her attorney and provide a reliable recounting of events;

(D) An ability to reason about available options by weighing their consequences, including, but not limited to, weighing pleas, waivers, and strategies;

(E) An ability to disclose to an attorney a reasonably coherent description of facts pertaining to the charges, as perceived by the juvenile; and

(F) An ability to articulate his or her motives; and

(x)(a) An opinion as to whether at the time the juvenile engaged in the conduct charged, as a result of immaturity or mental disease or defect, the juvenile lacked capacity to:

(1) Possess the necessary mental state required for the offense charged;

(2) Conform his or her conduct to the requirements of the law; and

(3) Appreciate the criminality of his or her conduct.

(b) In reaching this opinion, the examiner shall consider and make written findings with respect to the following questions regarding the juvenile's abilities and capacities:

(1) Was the juvenile able to form the necessary intent;

(2) Did the juvenile know which actions were wrong;

(3) Did the juvenile have reasonably accurate expectations of the consequences of his or her actions;

(4) Was the juvenile able to act of his or her own volition;

(5) Did the juvenile have the capacity to behave intentionally;

(6) Did the juvenile have the capacity to engage in logical decision-making;

(7) Did the juvenile have the capacity to foresee the consequences of his or her actions; and

(8) Did the juvenile have the capacity to exert control over his or her impulses and to resist peer pressure.

(8)(A) Within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed.

(B)(i) The parties may stipulate to the findings and conclusions of the evaluation report and the court may enter an order with respect to fitness based thereon.

(ii)(a) Otherwise, a hearing shall be conducted and in order for the court to find a juvenile fit to proceed, the prosecution shall be required to prove by a preponderance of the evidence the following:

(1) The juvenile understands the charges and potential consequences;

(2) The juvenile understands the trial process and proceedings against him or her; and

(3) The juvenile has the capacity to effectively participate with and assist his or her attorney in a defense to prosecution.

(b) The court shall issue written findings as to whether the prosecution has met its burden with respect to such issues and whether the juvenile is fit or unfit to proceed.

(9)(A) If the juvenile is found unfit to proceed, the court shall commit the juvenile to the custody of the Department of Human Services or a residential treatment facility for a period not to exceed nine (9) months.

(B) During this period, the facility responsible for the juvenile shall be required to report to the court and the parties at least every thirty (30) days on the juvenile's progress.

(C) If fitness to proceed is not restored within nine (9) months, the court shall convert the delinquency petition to a family in need of services petition.



(10)(A) If a juvenile is found fit to proceed, the court shall next conduct a hearing wherein the state shall be required to prove by a preponderance of the evidence that at the time the juvenile engaged in the conduct charged he or she had the capacity to:

(i) Possess the necessary mental state required for the offense charged;

(ii) Conform his or her conduct to the requirements of the law; and

(iii) Appreciate the criminality of his or her conduct.

(B)(i) In making the determination, the court shall consider the written findings of the examiner and any other relevant evidence and shall issue a written order with respect to the hearing.

(ii) If the court finds that the state did not meet its burden with regard to the capacity of the charged offense, but the juvenile had the capacity for a lesser included offense, the court shall convert the extended juvenile jurisdiction petition to a delinquency petition.

(iii) If the court finds the state did not meet its burden with regard to the capacity of the charged offense or a lesser included offense, the court shall convert the delinquency petition into a family in need of services petition.

(iv)(a) If the court finds that the state met its burden with regard to the capacity, the court shall schedule a designation hearing as described in § 9-27-503.

(b) Such a finding by the court does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing.

**History.** Acts 1999, No. 1192, § 2; substituted “custody of the Department of Health and Human Services” for “Arkansas State Hospital” in (b)(9)(A).  
2007, No. 568, § 4.

**Amendments.** The 2007 amendment

### 9-27-503. Designation hearing.

(a)(1) When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days following the petition or motion requesting such designation.

(2) These time limitations shall be tolled during the pendency of any competency issues.

(b) The party requesting the extended juvenile jurisdiction designation has the burden to prove by a preponderance of the evidence that such a designation is warranted.

(c) The court shall make written findings and consider all of the following factors in making its determination to designate a juvenile as an extended juvenile jurisdiction offender:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated delinquent and, if so, whether the offenses were against persons or property and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication and maturity of the juvenile, as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the court.

(d) Upon finding that the juvenile shall be treated as an extended juvenile jurisdiction offender, the court shall enter its written findings and inform the juvenile of his or her right to a jury trial and shall set a date for the adjudication.

(e) If the court denies the request for extended juvenile jurisdiction, the court shall enter its written findings and proceed with the case as a delinquency proceeding.

(f) For purposes of appeal, a designation order is a final appealable order and shall be subject to an interlocutory appeal.

**History.** Acts 1999, No. 1192, § 3.

### **9-27-504. Right to counsel.**

(a) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b) This right to counsel cannot be waived.

**History.** Acts 1999, No. 1192, § 4.

### **9-27-505. Extended juvenile jurisdiction adjudication.**

(a) An extended juvenile jurisdiction offender and the state shall have the right to a jury trial at the adjudication hearing.

(b) The juvenile shall be advised of the right to a jury trial by the circuit court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(c)(1) The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney.

(2) The waiver shall be in writing and signed by the juvenile, the juvenile's attorney, and the juvenile's parent or guardian, and the court shall inquire on the record to ensure that the waiver was made in a knowing, intelligent, and voluntary manner.

(d) All provisions of the Arkansas Code of 1987 Annotated and the Arkansas Rules of Criminal Procedure not in conflict with this subchapter that regulate criminal jury trials in circuit court shall apply to jury trials for juveniles subject to extended juvenile jurisdiction proceedings.

(e) The adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(f) The state bears the burden to prove the charges in the petition beyond a reasonable doubt.

(g)(1) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter a disposition subject to § 9-27-506.

(2) If the juvenile is adjudicated delinquent for an offense that would not have subjected him or her to extended juvenile jurisdiction, the court shall enter any of the dispositions available at § 9-27-330.

**History.** Acts 1999, No. 1192, § 5; the trial courts of original jurisdiction. 2003, No. 1166, § 29. The jurisdiction of the circuit courts now

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

### **9-27-506. Extended juvenile jurisdiction disposition hearing.**

If a juvenile is found delinquent as an extended juvenile jurisdiction offender, the circuit court shall enter the following dispositions:

(1) Order any of the juvenile dispositions authorized by § 9-27-330; and

(2) Suspend the imposition of an adult sentence pending court review.

**History.** Acts 1999, No. 1192, § 6; 2003, No. 1166, § 30.

### **9-27-507. Extended juvenile jurisdiction court review hearing.**

(a) The state may petition the circuit court at any time to impose an adult sentence if the juvenile:

(1) Has violated a juvenile disposition order;

(2) Has been adjudicated delinquent or found guilty of committing a new offense; or

(3) Is not amenable to rehabilitation in the juvenile system.

(b) If the court finds by a preponderance of the evidence that the juvenile has violated a juvenile disposition order, has been found delinquent or guilty of committing a new offense, or is not amenable to rehabilitation in the juvenile system, the court may:



(1) Amend or add any juvenile disposition authorized by § 9-27-330; or

(2)(A)(i) Exercise its discretion to impose the full range of adult sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment.

(ii) However, a sentence of imprisonment shall not exceed forty (40) years except for juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, who may be sentenced for any term, up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

(c)(1)(A) The juvenile may petition the court to review and modify the disposition at any time.

(B) If the juvenile's initial petition is denied, the juvenile must wait one (1) year from the date of the denial to file a new petition for modification.

(2)(A) The department may petition the court to review and modify the disposition at any time.

(B) If the department's initial petition for review and modification is denied, the department must wait one (1) year from the date of the denial to file a new petition for review and modification unless the department has clear and convincing new evidence that the juvenile has been rehabilitated.

(d)(1) If the state or the juvenile files a petition to modify the court's disposition order before six (6) months prior to the juvenile's eighteenth birthday, the filing party bears the burden of proof.

(2) If the juvenile is sixteen (16) or seventeen (17) years of age at the time that the extended juvenile jurisdiction petition is filed, then the State of Arkansas or the juvenile may petition the court after the juvenile's eighteenth birthday but no later than six (6) months before the juvenile's twenty-first birthday.

(e)(1) If no hearing has been conducted six (6) months before the juvenile's eighteenth birthday or no later than six (6) months before the juvenile's twenty-first birthday if the juvenile is sixteen (16) or seventeen (17) years of age at the time that the extended juvenile jurisdiction petition is filed, the court shall conduct a hearing to determine whether to release the juvenile, amend or add any juvenile disposition, or impose an adult sentence.

(2) In making its determination, the court shall consider the following:

(A) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(B) The nature of the offense or offenses and the manner in which the offense or offenses were committed;

(C) The recommendations of the professionals who have worked with the juvenile;

(D) The protection of public safety;

(E) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation; and

(F) Victim impact evidence admitted pursuant to § 16-97-103.

(3) If the state seeks to impose an adult sentence, the state must prove by a preponderance of the evidence that the imposition of an adult sentence is appropriate and that public safety requires imposition.

(4)(A) Following a hearing, the court may enter any of the following dispositions:

(i) Release the juvenile;

(ii) Amend or add any juvenile disposition; and

(iii)(a) Exercise its discretion to impose the full range of sentencing available in circuit court, including probation, suspended imposition of sentence, and imprisonment.

(b) A sentence of imprisonment shall not exceed forty (40) years, except juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, may be sentenced for any term, up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

**History.** Acts 1999, No. 1192, § 7; 2001, No. 1582, § 4; 2003, No. 1166, § 31; 2005, No. 1191, §§ 8, 9; 2009, No. 338, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction.

The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Amendments.** The 2005 amendment redesignated former (d) as present (d)(1); added (d)(2); and inserted "or no later than six (6) months ... petition is filed" in (e)(1).

The 2009 amendment inserted (c)(2) and redesignated the remaining subdivisions of (c) accordingly.

### **9-27-508. Extended juvenile jurisdiction records.**

(a) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult, or until the juvenile's twenty-first birthday, whichever is longer.

(b)(1) If an adult sentence is imposed upon an extended juvenile jurisdiction offender, the records of that case shall be considered adult criminal records.

(2)(A) The juvenile division of circuit court shall enter an order transferring the juvenile records to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal division of circuit court docket number and shall maintain the file as if the case had originated in the criminal division of circuit court.

**History.** Acts 1999, No. 1192, § 8; 2001, No. 1582, § 5.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

### **9-27-509. Division of Youth Services — Commitment of extended juvenile jurisdiction juveniles.**

(a) The court has sole release authority for juveniles in extended juvenile jurisdiction proceedings.

(b) In every case in which an order of commitment has been entered pursuant to an adjudication of delinquency, the facility to which the juvenile is committed shall, within thirty (30) days of the juvenile's commitment, prepare and file with the court a treatment case plan that shall:

(1) State the treatment plan for the juvenile; and

(2) State the anticipated length of commitment of the juvenile.

(c)(1) Upon determination that the juvenile has been rehabilitated, the Division of Youth Services of the Department of Human Services may petition the court for release.

(2) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

(A) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(B) The nature of the offense or offenses and the manner in which they were committed;



(C) The recommendations of the professionals who have worked with the juvenile;

(D) The protection of public safety; and

(E) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(3) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

**History.** Acts 1999, No. 1192, § 9.

### **9-27-510. Department of Correction — Placement.**

(a)(1) A juvenile who has received an adult sentence to the Department of Correction shall not be transported to the Department of Correction until the juvenile is sixteen (16) years of age.

(2) If a juvenile receives a sentence to the Department of Correction prior to the juvenile's sixteenth birthday, the juvenile shall be housed by the Division of Youth Services of the Department of Human Services until that date, except as provided by court order or parole decision made by the Parole Board.

(b) A juvenile sentenced in the criminal division of circuit court who is less than sixteen (16) years of age when sentenced shall be committed to the custody of the Division of Youth Services until his or her sixteenth birthday, at which time he or she shall be transferred to the Department of Correction.

(c)(1)(A) Juveniles sentenced to the Department of Correction pursuant to extended juvenile jurisdiction are subject to parole as any other inmate within the Department of Correction.

(B) Juveniles adjudicated for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, are subject to parole.

(2) Juveniles will be given credit for time served in a juvenile detention or juvenile facility against any adult sentence.

**History.** Acts 1999, No. 1192, § 10; 2001, No. 1582, § 6.

## **SUBCHAPTER 6 — COMMUNITY MENTAL HEALTH SERVICES FOR JUVENILES**

### **SECTION.**

9-27-601. Legislative intent.

9-27-602. Assessment of juvenile mental health services required.

### **SECTION.**

9-27-603. Mental health assessment — Requirements.

### **9-27-601. Legislative intent.**

It is the intent of the General Assembly of the State of Arkansas that:

(1) Juveniles receive mental health services in their communities whenever possible and in the least restrictive placement consistent with the juvenile's treatment needs;

(2) Juveniles be placed out of state for mental health services only when it is in the juvenile's best interest and there is no appropriate or available treatment in state to meet the needs of the juvenile;

(3) Circuit courts be provided with qualified mental health screenings to assist courts in ordering appropriate mental health services for juveniles; and

(4) Juvenile officers, mental health providers, residential providers, the Department of Human Services, Child and Adolescent Service System Program providers, attorneys, courts, and advocates shall work together to ensure the continuity of mental health services for juveniles in their communities.

**History.** Acts 2005, No. 1959, § 1.

cent Service System Program, § 20-47-

**Cross References.** Child and Adoles- 501 et seq.

### **9-27-602. Assessment of juvenile mental health services required.**

(a) Prior to the circuit court's ordering a juvenile to an out-of-state residential placement, excluding border state placements as defined by Medicaid, the court shall refer a juvenile for an assessment by the Department of Human Services or the department's designee to include, but not be limited to:

(1)(A) An assessment of the mental health services for the juvenile and the juvenile's family.

(B) If the assessment recommends that the juvenile cannot remain at home, all appropriate in-state placements currently available that are appropriate to meet the juvenile's mental health needs shall be presented to the court:

(i) With a preference for the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the family treatment plan;

(ii) That provide for the least restrictive placement ensuring the health and safety of the juvenile;

(iii) That provide an anticipated length of time needed for residential or inpatient treatment; and

(iv) That provide a plan for reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from treatment; and

(2)(A) The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services.

(B) If the assessment recommends that the juvenile cannot be served in the State of Arkansas, the assessment shall:

(i) Specify the reasons why the juvenile cannot be served in the state; and

(ii) Recommend what type of placement the child needs out of state and the reasons for such a recommendation.

(b) The department or its designee shall complete the out-of-state mental health assessment within five (5) business days of referral from the court.

(c) The assessment completed by the department or its designee shall be admitted into evidence, and the court shall consider the assessment in making its determination as to what services and placement should be ordered based on the best interest of the juvenile.

(d)(1) The court shall make a determination of the ability of the parent, guardian, or custodian of the juvenile to pay in whole or in part for mental health services.

(2) If the court determines an ability to pay, the court shall enter such an order for payment pursuant to § 9-27-333(e).

**History.** Acts 2005, No. 1959, § 2.

### **9-27-603. Mental health assessment — Requirements.**

(a) When a mental health screening or assessment is provided to the juvenile division of a circuit court, the screening or assessment shall include, but not be limited to, the following:

(1) The mental health services needed for the juvenile and the juvenile's family; and

(2) The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services.

(b) If the screening or assessment recommends that the juvenile cannot remain safely in his or her home, then the screening or assessment shall state the recommended type of residential treatment or inpatient treatment that is needed for the juvenile that:

(1) Meets the treatment needs of the juvenile;

(2) Allows the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the treatment plan;

(3) Provides for the least restrictive placement ensuring the health and safety of the juvenile;

(4) Provides an anticipated length of time needed for residential or inpatient treatment; and

(5) Provides a plan for the reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from residential or inpatient treatment.

**History.** Acts 2005, No. 1959, § 3.

## **CHAPTER 28**

### **PLACEMENT OR DETENTION**

#### **SUBCHAPTER.**

1. GENERAL PROVISIONS. [RESERVED.]
2. YOUTH SERVICES.
3. RANDOM HEALTH INSPECTIONS OF DIVISION OF YOUTH SERVICES FACILITIES.
4. CHILD WELFARE AGENCY LICENSING ACT.
5. KINSHIP FOSTER CARE.
6. THERAPEUTIC GROUP HOMES AND INDEPENDENT LIVING PROGRAMS.
7. COMMUNITY-BASED SANCTIONS.



## SUBCHAPTER

8. HOUSING FOR JUVENILE OFFENDERS BETWEEN THE AGES OF EIGHTEEN AND TWENTY-ONE.
9. FOSTER PARENT SUPPORT ACT.
10. SAFEGUARDS FOR CHILDREN IN FOSTER CARE ACT.

## SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

## SUBCHAPTER 2 — YOUTH SERVICES

## SECTION.

- 9-28-201. Legislative intent and purpose.
- 9-28-202. Creation of the Division of Youth Services — Director.
- 9-28-203. Division of Youth Services — Powers and duties.
- 9-28-204. Observation and assessment center.
- 9-28-205. Youth services centers.
- 9-28-206. Disposition of delinquent juvenile.
- 9-28-207. Commitment to the Division of Youth Services.
- 9-28-208. Order of commitment.
- 9-28-209. Commitment conditions and terms.

## SECTION.

- 9-28-210. Release.
- 9-28-211. Escape from youth services center or facilities.
- 9-28-212. Sale of goods produced at youth services centers — Disposition of funds.
- 9-28-213. [Repealed.]
- 9-28-214. Penalty for escape.
- 9-28-215. Departure without authorization — Release of information.
- 9-28-216. Separation of juvenile offenders — Regulations — Review.
- 9-28-217. Juvenile records confidentiality.

**A.C.R.C. Notes.** The repeal of former §§ 9-28-204 and 9-28-209 by Acts 1995, No. 1261 were deemed to supersede the amendments by Acts 1995, No. 1335.

References to “this subchapter” in §§ 9-28-201 — 9-28-212 may not apply to §§ 9-28-213 — 9-28-215 which were enacted subsequently.

**Publisher’s Notes.** As to jurisdiction of the circuit court over certain proceedings, see § 9-27-306.

Former subchapter 2, concerning youth services, was repealed by Acts 1995, No. 1261, § 18. The former subchapter was derived from the following sources:

- 9-28-201. Acts 1977, No. 502, § 1; A.S.A. 1947, § 45-501.
- 9-28-202. Acts 1977, No. 502, §§ 2, 14; A.S.A. 1947, §§ 45-502, 45-514.
- 9-28-203. Acts 1977, No. 502, §§ 3, 12; A.S.A. 1947, §§ 45-503, 45-512.
- 9-28-204. Acts 1977, No. 502, § 4; A.S.A. 1947, § 45-504; Acts 1994 (2nd Ex. Sess.), No. 44, § 2; 1995, No. 1335, § 4.
- 9-28-205. Acts 1977, No. 502, § 6; A.S.A. 1947, § 45-506.

9-28-206. Acts 1977, No. 502, § 5; A.S.A. 1947, § 45-505.

9-28-207. Acts 1977, No. 502, §§ 9, 13; 1979, No. 26, § 1; A.S.A. 1947, §§ 45-509, 45-513.

9-28-208. Acts 1977, No. 502, § 7; A.S.A. 1947, § 45-507.

9-28-209. Acts 1977, No. 502, § 8; A.S.A. 1947, § 45-508; Acts 1991, No. 763, § 3; 1994 (2nd Ex. Sess.), No. 44, § 1; 1995, No. 1335, § 5.

9-28-210. Acts 1977, No. 502, § 11; 1985, No. 292, § 1; A.S.A. 1947, § 45-511; Acts 1991, No. 763, § 4; 1993, No. 974, § 1.

9-28-211. Acts 1977, No. 502, § 10; A.S.A. 1947, § 45-510.

9-28-212. Acts 1977, No. 502, § 13; 1979, No. 26, § 1; A.S.A. 1947, § 45-513.

9-28-213. Acts 1977, No. 502, § 15; A.S.A. 1947, § 45-515.

**Cross References.** Consolidation of state institutions to Department of Human Services, § 25-10-101 et seq.

**Effective Dates.** Acts 1997, No. 312, § 24; Feb. 28, 1997. Emergency clause provided: “It is hereby found and deter-

mined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 397, § 5: Mar. 7, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the identity and description of juvenile escapees cannot now be released to the public or even law enforcement agencies; that this confidentiality of information hampers the apprehension of persons who may be a threat to themselves or others; that this act will authorize the release of information to aid in the apprehension of juvenile escapees; and that this act should go into effect immediately in order to provide both law enforcement agencies and the public a greater ability to apprehend juvenile escapees as soon as possible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further

clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 972, § 3: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the education provided in the Division of Youth Services facilities is lacking; that all children, including those housed in Division of Youth Services facilities should be afforded a suitable education; and that this act is immediately necessary to allow the Department of Education to assist the Division of Youth Services in implementing a system of education that will impact all students housed in the Division of Youth Services facilities. Therefore, an

emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by

the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**A.L.R.** Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 A.L.R.4th 1211.

Social worker malpractice. 58 A.L.R.4th 977.

**Am. Jur.** 47 Am. Jur. 2d, Juv. Cts., § 29 et seq.

**C.J.S.** 14 C.J.S., Civil R., § 51.

35 C.J.S., False Imp., § 70.

43 C.J.S., Infants, § 31 et seq., § 79.

83 C.J.S., Stip., § 15.

### 9-28-201. Legislative intent and purpose.

The General Assembly recognizes that the state has a responsibility to provide its youth with appropriate services and programs to help decrease the number of juvenile offenders in the state and to create a better future for the state's youth and that reforms in the juvenile justice system require oversight by an organization with special expertise in the problems of juvenile offenders. Therefore, the General Assembly declares that this subchapter is necessary to create a single entity within the Department of Human Services with primary responsibility for coordinating, sponsoring, and providing services to Arkansas' youth and to create a structure within state government that will be responsive to the needs of the state's youth.

**History.** Acts 1995, No. 1261, § 1.

### 9-28-202. Creation of the Division of Youth Services — Director.

(a) There is hereby created the Division of Youth Services within the Department of Human Services.

(b) The Governor may appoint the Director of the Division of Youth Services of the Department of Human Services or may delegate that function to the Director of the Department of Human Services.

**History.** Acts 1995, No. 1261, § 2.

### 9-28-203. Division of Youth Services — Powers and duties.

(a) The Division of Youth Services of the Department of Human Services shall perform the following functions and have the authority and responsibility to:

(1) Coordinate communication among the various components of the juvenile justice system;

(2) Oversee reform of the state's juvenile justice system;



(3) Provide services to delinquent and families-in-need-of-services youths;

(4) Conduct research into the causes, nature, and treatment of juvenile delinquency and related problems;

(5) Develop programs for early intervention and prevention of juvenile delinquency;

(6) Maintain information files on juvenile delinquents in the state;

(7) Actively pursue the maximization of federal funding for juvenile delinquency and related programs;

(8) Evaluate the effectiveness and efficiency of the programs and services offered by the division and recommend changes to the Governor;

(9) Provide a system of education in residential facilities operated by the division that conform to the guidelines established by the Department of Education and as set forth in § 9-28-205; and

(10) Do and perform all other actions and exercise all other authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

(b) In addition to other duties enumerated in this subchapter, the division shall provide services as follows:

(1) The Civilian Student Training Program shall provide services to youths that shall consist of, but not be limited to, school reintegration, counseling, tutoring, job placement counseling, corrective behavior skill counseling, and training;

(2)(A) Case management services will include, but not be limited to:

(i) Making placement recommendations to court authorities; and

(ii) Arrangement, coordination, and monitoring of services for a juvenile.

(B) These services may be acquired by agreement with community providers, other agencies, or individuals as may be necessary;

(3)(A) Client-specific services shall consist of, but not be limited to:

(i) Independent living, tracker, or proctor services;

(ii) Family or individual therapy; and

(iii) Individualized treatment or supportive care services.

(B) These services may be acquired by agreement with community providers or other agencies or individuals deemed professionally capable of delivering the required services;

(4)(A) Serious offender programs, for youths charged with violent offenses, shall consist of appropriate residential treatment programs at any of the youth services centers or facilities.

(B) Serious offender programs or community-based programs may be acquired by agreements with entities or agencies deemed appropriate and capable of providing such services;

(5) Less restrictive community-based programs selected by the Director of the Division of Youth Services of the Department of Human Services for youths not deemed at risk of performing violent offenses;

(6)(A) Observation and assessment services shall consist of, but not be limited to, those activities necessary to ensure appropriate recom-

mentations for intervention, services, and placement of low-risk and medium-risk juveniles.

(B) Observation and assessment services may be acquired by agreements with community providers or other agencies or individuals deemed to have the appropriate level of expertise to perform observation and assessment or diagnosis and evaluation;

(7)(A) Residential observation and assessment services shall consist of, but not be limited to, those activities necessary to ensure appropriate recommendations for intervention, services, and placement of high-risk juveniles.

(B) Residential observation and assessment services may be performed by or at appropriate state-operated facilities or by agreement with appropriate agencies or individuals deemed to have the appropriate level of expertise to perform residential observation and assessment or diagnosis and evaluation;

(8)(A)(i) Community-based alternative basic services shall consist of, but not be limited to, prevention, intervention, casework, treatment, counseling, observation and assessment, case management, and residential services.

(ii) Primary goals for community-based alternative basic services shall be the prevention of youths from entering the juvenile justice system and the provision of professional, community-based, least-cost services to youths.

(B) These services shall be acquired by agreements with local community providers or other agencies or individuals deemed professionally capable and appropriate to deliver such services; and

(9)(A) Expanded services may consist of, but not be limited to:

(i) Expansion of existing programs;

(ii) Specific programs for alcohol, drug, or sex offenders;

(iii) Special therapeutic treatment programs or client-specific services in which a consistent population has been defined as in need of multidiscipline care and services; and

(iv) Expansion of proven, effective, early intervention and prevention program activities.

(B) Utilization of funds appropriated for expanded services shall be as directed by the director.

(c) The division shall pursue the maximization of federal funds to benefit the youth of Arkansas.

(d)(1) The division shall promulgate rules and regulations as necessary to administer this subchapter.

(2) The regulations shall be reviewed by the Senate Interim Committee on Children and Youth or any appropriate legislative committee during legislative sessions.

**History.** Acts 1995, No. 1261, § 3; 1997, No. 312, § 1; 2009, No. 972, § 1.

**Amendments.** The 2009 amendment inserted present (a)(9), redesignated the

following subdivision accordingly; and made related changes.

**Cross References.** Private service contract notice required, § 25-10-136.

Private service contract performance evaluation requirement, § 25-10-137.

### CASE NOTES

#### **Tort Immunity.**

A juvenile rehabilitation camp housing juvenile offenders under this section, as a volunteer agency, was not entitled to immunity under the Arkansas Volunteer Im-

munity Act, § 16-6-101 et seq., nor entitled to charitable immunity under the common-law doctrine of charitable immunity. *Ouachita Wilderness Inst. v. Mergen*, 329 Ark. 405, 947 S.W.2d 780 (1997).

#### **9-28-204. Observation and assessment center.**

(a) The Division of Youth Services of the Department of Human Services shall establish and maintain an observation and assessment center for the reception, orientation, classification, and adjustment evaluation of all youths committed to the division.

(b)(1) The staff of the center shall be provided by the division or its designee.

(2) The staff shall consist of the professional and clerical personnel as are necessary to perform the functions of the center as provided in this section.

(c) The center shall be a secure facility and shall be equipped to hold committed youths for such period of time as necessary to provide for orientation, diagnosis, evaluation, and classification of a youth.

**History.** Acts 1995, No. 1261, § 4; 1995, No. 1335, § 4.

#### **9-28-205. Youth services centers.**

(a) The physical facilities and programs at each of the youth services centers shall be designed and developed to be particularly suitable for the physical custody, care, education, and rehabilitation of youths of particular classifications.

(b) In classifying and committing youths to the various centers and facilities, the Division of Youth Services of the Department of Human Services shall take into consideration a youth's age, sex, physical condition, mental attitude and capacity, prognosis for rehabilitation, the seriousness of the committing offense, and such other criteria as the division shall determine.

(c)(1)(A) The division shall establish a system of education that shall conform to the guidelines established by the Department of Education.

(B) The Department of Education shall establish guidelines for the division's system of education no later than July 1, 2009.

(C)(i) The division, with the support and assistance of the Department of Education, shall conduct an education program assessment of each division facility and provide a written report of assessment findings to the division no later than December 1, 2009.



(ii) The division, with the support and assistance of the Department of Education, shall submit a corrective action plan for each division facility to the Director of the Division of Youth Services, if needed, no later than December 1, 2009.

(iii) The Department of Education shall monitor the division's system of education to ensure that the guidelines established by the Department of Education are satisfied by the division's system of education.

(2) A student enrolled in the division's system of education shall receive credit for courses that meet the guidelines established by the Department of Education.

(3) Course credits and promotions received by a student enrolled in the division's system of education shall be considered transferable in the same manner as those course credits and promotions from other educational entities.

(4)(A) A student's home school district or the school district in which the division facility is located may issue a diploma for a student who successfully completes the graduation requirements of the school district.

(B) If neither a student's home school district nor the school district in which the division facility is located is able to issue a diploma, then the Department of Human Services is authorized to issue a diploma to a student who successfully completes the requirements of the division's system of education.

(5) The division is authorized to contract for services, or hire staff, teachers, and other personnel as necessary to carry out the provisions of this section subject to the following requirements:

(A) A teacher employed in the division's system of education shall hold a valid Arkansas teacher's license in the appropriate area of instruction, unless the teacher participates in an additional licensure plan for the appropriate area of instruction at the time of employment;

(B) Staff, teachers, and other personnel employed by the division's system of education shall be eligible for membership in the Arkansas Teacher Retirement System and shall earn credited service for employment; and

(C) The division's system of education shall compensate teachers in accordance with the minimum teacher salary schedule set forth in § 6-17-2403.

(d) The division, the Department of Education, and the Department of Career Education shall work collaboratively to prepare courses of study for the division's system of education, including courses in career and technical education suited to the age and capacity of the youths.

(e) The Department of Human Services, the Department of Education, and the Department of Career Education may promulgate rules as necessary to administer the requirements of this section.

(f) The Department of Human Services and the Department of Education shall report annually, beginning on March 1, 2010, to the

House Committee on Aging, Children and Youth, Legislative and Military Affairs and to the Senate Interim Committee on Children and Youth on the state of the division's system of education.

**History.** Acts 1995, No. 1261, § 5; 2009, No. 956, § 28; 2009, No. 972, § 2.

**Amendments.** The 2009 amendment by No. 956 inserted "physical" in (a).

The 2009 amendment by No. 972 inserted (c) and (f), redesignated the remaining subsections accordingly, and rewrote (d) and (e).

### 9-28-206. Disposition of delinquent juvenile.

(a) When a circuit court or any other court having jurisdiction of a juvenile under eighteen (18) years of age finds a juvenile to be delinquent as defined by the laws of this state, the court may commit the juvenile to the Division of Youth Services of the Department of Human Services for an indeterminate period not to exceed the twenty-first birthday of the juvenile.

(b) No court may commit a juvenile found solely in criminal contempt to the division.

**History.** Acts 1995, No. 1261, § 6; 1999, No. 1192, § 21; 2005, No. 192, § 1.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

**Amendments.** The 2005 amendment added the subsection (a) designation; deleted "or to have committed a crime" following "to be delinquent"; and added (b).

### 9-28-207. Commitment to the Division of Youth Services.

(a) When any youth is committed to the Division of Youth Services of the Department of Human Services as authorized in this section, the youth shall be under the exclusive care, physical custody, and control of the division from the time of the lawful reception of the youth by a youth services center until the youth is released from the physical custody of the division.

(b) The fact that a youth has been committed to the division shall not be received in evidence in any court in this state in any subsequent proceeding affecting the youth, except as otherwise provided by law.

**History.** Acts 1995, No. 1261, § 7; 2009, No. 956, § 29.

**Amendments.** The 2009 amendment inserted "physical" in two places in (a).

### CASE NOTES

#### Serious Offender Program.

Chancellor lacked authority to order commitment of a juvenile offender to a serious offender program within the youth

services center. Arkansas Dep't of Human Servs. v. State, 319 Ark. 749, 894 S.W.2d 592 (1995).

**9-28-208. Order of commitment.**

(a)(1) An order of commitment to the Division of Youth Services of the Department of Human Services shall state that the juvenile is found to be delinquent and shall state information regarding the underlying facts of the adjudication.

(2) No circuit court may commit a juvenile found solely in criminal contempt to the division.

(3) All health care providers shall transmit to the division all medical and health information on the committed juvenile within three (3) days from the request of the division, including individually identifiable health information needed for the division to assume the role of caretaker for the committed juvenile.

(4) The committed juvenile's school or current educational setting shall transmit the education record, as defined by rule of the Department of Education, to the division within ten (10) school days from the request from the division.

(b)(1) Upon entry of an order of detention and commitment to a youth services center pursuant to § 9-27-330 or § 9-27-509, a court shall transmit to the division:

(A) A copy of the commitment order;

(B) A copy of the risk assessment instrument; and

(C) Records or information pertaining to the juvenile compiled by the intake officer or juvenile probation officer that shall include:

(i) Information on the juvenile's background, history, behavioral tendencies, and family status;

(ii) The reasons for the juvenile's commitment;

(iii) The name of the school in which the juvenile is currently or was last enrolled;

(iv) The juvenile's offense history;

(v) The juvenile's placement history;

(vi) A copy of all psychological or psychiatric evaluations or examinations performed on the juvenile admitted into evidence or ordered by the court while under the jurisdiction of the court or the supervision of the court staff;

(vii) A comprehensive list of all current medications taken by the juvenile; and

(viii) A comprehensive list of all medical treatment currently being provided to the juvenile.

(2) The records or information specified in subdivision (b)(1) of this section shall be delivered to the division prior to or at the time the juvenile is transported to a youth services center.

(3) Information relating to the committing offense is exclusively for the benefit of the division and shall not be disclosed by division officials or employees without written authorization of the committing court, except for data and statistical compilations as otherwise provided by law.

(c) Except when an extended juvenile jurisdiction offender is committed to the division, an order of commitment shall remain in effect for



an indeterminate period not exceeding two (2) years, subject to extension by the committing court for additional periods of one (1) year if the court finds an extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(d) Commitment shall not exceed the twenty-first birthday of a juvenile.

(e) When an order of commitment includes recommendations for a specific type of placement, the division shall consider those recommendations in making a placement.

**History.** Acts 1995, No. 1261, § 8; 1999, No. 1192, § 22; 2005, No. 192, § 2; 2005, No. 1820, § 1.

**Amendments.** The 2005 amendment by No. 192 redesignated former (a) as present (a)(1); deleted “or to have committed a crime” following “to be delinquent” in present (a)(1); and added (a)(2).

The 2005 amendment by No. 1820, redesignated former (a) as present (a)(1); deleted “or to have committed a crime” following “found to be delinquent” in present (a)(1); added (a)(3) and (a)(4); in (b)(1), inserted “Upon entry ... § 9-27-

509” and deleted “with a committing order” preceding “transmit”; added (b)(1)(A) and the (b)(1)(B) designation; in present (b)(1)(B), deleted “a report on the juvenile, setting forth in detail all available pertinent information concerning the juvenile’s background, family status, school record, behavioral tendencies, and all other pertinent information that it may have, including the reasons for the juvenile’s commitment” from the end; added (b)(1)(C) and (b)(2); redesignated former (b)(2) as present (b)(3); and made related changes throughout.

## CASE NOTES

### ANALYSIS

Construction.  
Applicability.  
Age.

#### Construction.

Even though this section was amended to extend commitment time for juveniles beyond age 18 under certain circumstances, the section presupposes that the youth has already been committed at the time he or she turns 18 and allows for that commitment to continue. *Hansen v. State*, 323 Ark. 407, 914 S.W.2d 737 (1996).

Juvenile’s argument that trial court’s commitment order was invalid on its face failed because the trial court’s finding that the commitment was based upon a finding of criminal contempt and violation of the Division of Youth Services aftercare plan satisfied the requirements of subsection (a) of this section; criminal contempt was a crime in the ordinary sense. *Ark. Dep’t of Human Servs. v. Mainard*, 358 Ark. 204, 188 S.W.3d 901 (2004).

#### Applicability.

Subsection (d) of this section cannot be invoked unless the juvenile is currently

committed to the Office of Youth Services. *Wright v. State*, 331 Ark. 173, 959 S.W.2d 50 (1998).

#### Age.

Motion to transfer to juvenile court denied in part because defendant was seventeen years old. *Sanders v. State*, 326 Ark. 415, 932 S.W.2d 315 (1996).

The fact that juveniles cannot be committed to the Division of Youth Services for rehabilitation unless they are already committed at the time they turn 18 is highly relevant to a 17-year-old juvenile’s prospects for rehabilitation, and is an important factor in determining a motion to transfer. *Maddox v. State*, 326 Ark. 515, 931 S.W.2d 438 (1996).

Motion to transfer to juvenile court was properly denied where defendant was charged with serious felonies, was presently nineteen years old, and had virtually no juvenile services available to him. *Majesty v. State*, 330 Ark. 416, 954 S.W.2d 245 (1997).

Young people over the age of eighteen can no longer be committed to the Division of Youth Services for rehabilitation unless they are already committed at the time

they turn eighteen. *Brown v. State*, 330 Ark. 518, 954 S.W.2d 276 (1997).

**Cited:** *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997);

*Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997); *Smith v. State*, 328 Ark. 736, 946 S.W.2d 667 (1997); *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998).

**9-28-209. Commitment conditions and terms.**

(a)(1) Upon commitment to the Division of Youth Services of the Department of Human Services, a youth shall be delivered to the observation and assessment center for orientation, classification, diagnosis, and evaluation.

(2) Upon completion of such orientation, classification, diagnosis, and evaluation, the staff of the observation and assessment center shall make recommendations to the Director of the Division of Youth Services of the Department of Human Services with respect to the placement of a youth.

(b) Upon receipt of the recommendations, the director shall determine whether a youth shall be placed in a youth services center or facility or any program operated by the Department of Human Services.

(c)(1) If the division determines that a youth shall be retained in any of the facilities or programs, it shall consider the youth’s physical condition, mental attitude and capacity, prognosis for successful rehabilitation, and such other criteria as the division shall establish in order to place the youth in the most appropriate facility or program as determined by the division.

(2) If the division determines that a youth is not suited for placement in a youth services center or facility, it shall report its findings to the committing court along with information regarding the placement of the youth.

(d) The division has the authority to move a youth at any time within its system of youth services centers or facilities and community-based programs or within the department’s programs or facilities.

**History.** Acts 1995, No. 1261, § 9; 1995, No. 1335, § 5.

**CASE NOTES**

**ANALYSIS**

Age of Defendant.  
Serious Offender Program.

**Age of Defendant.**

Where defendant was sixteen at the time of the offense was committed, but would have reached the age of eighteen by the time he was convicted, he could not then have been committed to a youth services center on conviction, and therefore a transfer of his case to juvenile court was unwarranted. *Sims v. State*, 320 Ark.

528, 900 S.W.2d 508 (1995), overruled, *MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998).

**Serious Offender Program.**

Chancellor lacked authority to order commitment of a juvenile offender to a serious offender program within the youth services center. *Arkansas Dep’t of Human Servs. v. State*, 319 Ark. 749, 894 S.W.2d 592 (1995).

**Cited:** *Bright v. State*, 307 Ark. 250, 819 S.W.2d 7 (1991); *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *Troutt*

Bros. v. Emison, 311 Ark. 27, 841 S.W.2d 604 (1992); Myers v. State, 317 Ark. 70, 876 S.W.2d 246 (1994).

### **9-28-210. Release.**

(a)(1) In consideration of its juvenile correctional role, the Division of Youth Services of the Department of Human Services shall establish objective guidelines for length of stay when juveniles are committed to the division.

(2) Except when an extended juvenile jurisdiction offender or a juvenile committed to the division from circuit court is committed to the division, length-of-stay determinations shall be the exclusive responsibility of the division, and committed juveniles shall be reintegrated into society at a pace determined by the seriousness of the committing offense, aggravating or mitigating circumstances, community compatibility, and clinical prognosis.

(3) When an extended juvenile jurisdiction offender has been committed to the division, the committing court shall have sole release authority.

(4)(A) Upon determination that the juvenile has been rehabilitated, the division may petition the court for release.

(B) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

(i) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(ii) The nature of the offense or offenses and the manner in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(5) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

(b) The division shall establish policies regarding the eligibility of juveniles for release consideration.

(c)(1) Whenever the Director of the Division of Youth Services of the Department of Human Services, upon examination of all information and recommendations provided, shall determine that release of a juvenile is in the interest of both the state and the juvenile, the division shall grant release or petition the committing court for release if the juvenile is an extended juvenile jurisdiction offender.

(2) Except when an extended jurisdiction offender is committed to the division, release decisions shall be made by the director without the necessity of an application by or on behalf of a juvenile.

(3) In determining whether the release of a juvenile is in the best interest of both the state and the juvenile, the division shall consider



the circumstances of the committing offense, any recommendations of the committing judge, any recommendations of the probation officer of the committing court, the juvenile's previous delinquency record, the availability of community programs, and the stability of the juvenile's home environment.

(d)(1) The committing court may recommend at any time that a juvenile be released from the custody of the division.

(2) A recommendation for release shall be provided in writing to the division stating the reasons release is deemed in the best interest of the juvenile and society.

(3) Except when an extended juvenile jurisdiction offender is committed to the division, a final decision to release shall be made by the division.

(e) Upon release from the custody of the division, a juvenile shall remain under the jurisdiction of the committing court for an indeterminate period not to exceed two (2) years, except when an extended juvenile jurisdiction offender is committed to the division.

**History.** Acts 1995, No. 1261, § 10;  
1999, No. 1192, § 23.

### **9-28-211. Escape from youth services center or facilities.**

(a) If any delinquent youth committed to the Division of Youth Services of the Department of Human Services escapes or absents himself or herself from a youth services center or facility without authorization, he or she may be returned to the facility by a law enforcement officer without further proceedings.

(b) No law enforcement officer, Department of Human Services' State Institutional System Board member, division employee, or other person shall be subject to suit or held criminally or civilly liable for his or her actions provided he or she acts in good faith and without malice in the apprehension and return of escapees.

**History.** Acts 1995, No. 1261, § 11.

### **9-28-212. Sale of goods produced at youth services centers — Disposition of funds.**

All funds derived from the sale of agricultural products, livestock, or manufactured articles, or from other activities carried on at the youth services centers or facilities shall be deposited into the State Treasury in the Youth Services Fund Account of the Department of Human Services Fund to be used exclusively for the support of the Division of Youth Services of the Department of Human Services.

**History.** Acts 1995, No. 1261, § 12.

## CASE NOTES

**Cited:** Ouachita Wilderness Inst. v. Mergen, 329 Ark. 405, 947 S.W.2d 780 (1997).

**9-28-213. [Repealed.]**

**Publisher's Notes.** This section, concerning the penalty for escape as enacted by Acts 1997, No. 1229, was repealed by

Acts 1999, No. 1508, § 7. The section was derived from Acts 1997, No. 1229, § 8.

**9-28-214. Penalty for escape.**

(a) If charged and found guilty as an adult for first degree escape, § 5-54-110, or second degree escape, § 5-54-111, a juvenile shall be given a mandatory sentence of not less than nine (9) months in an appropriate facility of the Department of Correction.

(b) If adjudicated delinquent for first degree escape, § 5-54-110, or second degree escape, § 5-54-111, a juvenile shall be committed to the Division of Youth Services of the Department of Human Services and placed in a more restricted facility in order to complete the remaining term of his or her commitment, provided that if the juvenile escaped from the most restricted facility, the juvenile shall complete the remaining term of his or her commitment at that or a similar facility.

(c) The juvenile may receive credit for time served.

**History.** Acts 1997, No. 1299, § 8.

may not apply to this section which was enacted subsequently.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 9-28-201 — 9-28-212

**9-28-215. Departure without authorization — Release of information.**

(a) When a juvenile departs without authorization from a youth services center or other facility operated by the Division of Youth Services of the Department of Human Services for the care of delinquent juveniles, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Youth Services of the Department of Human Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information he or she deems necessary to aid in the apprehension of the juvenile and safeguard the public welfare.

(b) When a juvenile departs without authorization from the Arkansas State Hospital, if at the time of departure the juvenile is committed as a result of an acquittal, for mental disease or defect, of an offense for which the juvenile could have been tried as an adult, the Director of the Division of Behavioral Health of the Department of Human Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information he or she deems necessary

to aid in the apprehension of the juvenile and safeguard the public welfare.

(c) When a juvenile departs without authorization from a local juvenile detention facility, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the director of the juvenile detention facility shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and safeguard the public welfare.

**History.** Acts 1997, No. 397, § 1.

enacted subsequently.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 9-28-201 — 9-28-212 may not apply to this section which was

**Cross References.** Disposition of juvenile offenders, § 9-27-330.

### **9-28-216. Separation of juvenile offenders — Regulations — Review.**

(a) The Division of Youth Services of the Department of Human Services shall promulgate regulations to require the separation of juvenile offenders committed to a facility operated by the division based upon:

- (1) The age of the juvenile offender;
- (2) The seriousness of the crime or crimes committed by the juvenile offender; or
- (3) Whether the juvenile offender has been adjudicated delinquent of a sex offense as defined under § 12-12-903(12).

(b) No regulation pertaining to the separation of juvenile offenders promulgated hereafter by the division shall be effective until reviewed by the Legislative Council, the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and the Senate Interim Committee on Children and Youth, or appropriate subcommittees thereof, of the General Assembly.

**History.** Acts 1999, No. 1030, § 1.

### **9-28-217. Juvenile records confidentiality.**

(a) Except as provided in subsection (c) of this section, reports, correspondence, memoranda, case histories, or other material that personally identifies a juvenile, including protected health information, compiled or received by a juvenile detention facility, a community-based provider for the Division of Youth Services of the Department of Human Services, or the division shall be confidential and shall not be released or otherwise made available except to the following persons or entities and to the extent permitted by federal law:

- (1) The juvenile;
- (2) The juvenile’s parent, guardian, or custodian;
- (3) The juvenile division of circuit court and court staff;



(4) The ombudsman of youth committed to the division;

(5) The attorney for the juvenile;

(6) The attorney ad litem for the juvenile;

(7) A grand jury or a court upon a finding that information in the juvenile's record is necessary for the determination of an issue before the court or the grand jury;

(8)(A) Individual federal and state representatives and senators and their staff members in their official capacity.

(B) However, no disclosure shall be made to any committee or legislative body of any information that identifies any recipient of services by name or address unless the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or custodian agree in writing to waive confidentiality and permit disclosure to the committee or legislative body;

(9) Law enforcement or the prosecuting attorney;

(10) Service providers, including health care providers, to assist in the care, evaluation, examination, or treatment of the juvenile;

(11) A governmental agency for an audit or similar activity conducted in connection with the administration of any plan or program if the governmental agency is authorized by law to conduct the audit or activity;

(12) A court-appointed special advocate upon presentation of an order of appointment;

(13) A federal program or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need;

(14) A federal, state, or local government entity or any agent of the entity having a need for the information in order to carry out its responsibilities under law to serve or protect a juvenile delinquent or a juvenile who is a member of a family in need of services;

(15) Any licensing or registering authority may access to the extent necessary to carry out its official responsibilities;

(16) A multidisciplinary team coordinating a child maltreatment investigation under the Child Maltreatment Act, § 12-18-101 et seq., pertaining to the juvenile; and

(17) The general public about any juvenile fatality if the death occurred when the division, a detention center, or a community-based provider had responsibility for placement and care of the juvenile.

(b)(1) Any person or agency to whom disclosure is made shall not disclose to any other person not identified in subsection (a) of this section a report or other information obtained pursuant to this section.

(2) Nothing in this subsection shall be construed to prevent subsequent disclosure by the parent, guardian or custodian, the juvenile, or the juvenile's attorney.

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(c) No information pertaining to a juvenile shall be released by a juvenile detention facility, a community-based provider for the division,

or the division after the juvenile reaches eighteen (18) years of age unless:

- (1) The juvenile remains in the custody of the division;
- (2) The juvenile consents; or
- (3) An order requiring release of the information is entered by a court or a grand jury.

**History.** Acts 2007, No. 742, § 1; 2009, No. 758, § 15.

**A.C.R.C. Notes.** The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2009 amendment substituted “under the Child Maltreatment Act, § 12-18-101 et seq.” for “pursuant to the Arkansas Child Maltreatment Act, § 12-12-501 et seq.” in (a)(16).

**Effective Dates.** Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.”

### SUBCHAPTER 3 — RANDOM HEALTH INSPECTIONS OF DIVISION OF YOUTH SERVICES FACILITIES

#### SECTION.

9-28-301. Inspections — Timing — Report — Audit.

#### SECTION.

9-28-302. Security inspections.

**Publisher's Notes.** Former subchapter 3, concerning juveniles in need of supervision, was repealed by Acts 1989, No. 273, § 47. The former subchapter was derived from the following sources:

9-28-301. Acts 1977, No. 509, § 1; A.S.A. 1947, § 45-601.

9-28-302. Acts 1977, No. 509, § 2; A.S.A. 1947, § 45-602.

9-28-303. Acts 1977, No. 509, § 3; A.S.A. 1947, § 45-603.

9-28-304. Acts 1977, No. 509, § 4; A.S.A. 1947, § 45-604.

9-28-305. Acts 1977, No. 509, § 5; A.S.A. 1947, § 45-605.

9-28-306. Acts 1977, No. 509, § 6; A.S.A. 1947, § 45-606.

For present provisions regarding juveniles in need of supervision, see generally § 9-27-301 et seq.

### 9-28-301. Inspections — Timing — Report — Audit.

(a) In order to assure that juveniles committed to facilities operated by or under contract with the Division of Youth Services of the Department of Human Services are not subject to unsafe and unsanitary living conditions, the Director of the Department of Human Services or a duly authorized agent is authorized to enter the controlled premises and conduct random and unannounced health inspections of the facilities.

(b)(1) Inspections shall include, but shall not be limited to, compliance with:

- (A) Rules pertaining to general sanitation;

- (B) Rules pertaining to retail food establishments;
- (C) The Arkansas Mechanical Code of the Department of Health;
- (D) The Arkansas Plumbing Code and the Arkansas Natural Gas Code of the Department of Health;
- (E) Rules of the Arkansas State Board of Pharmacy; and
- (F) Rules pertaining to controlled substances.

(2) If the youth services facility is not accredited by the Commission on Accreditation for Corrections, the inspection shall also include compliance with the health and safety standards contained in the applicable American Correctional Association Standards manual, as in effect on January 1, 2005.

(c) The inspections, while random, shall be performed at least two (2) times per calendar year with specific follow-up inspections by the Department of Health to monitor deficiencies and corrections as determined by the Department of Health.

(d) The Department of Human Services shall adopt the standards in effect on January 1, 2005, published by the American Correctional Association in cooperation with the Commission on Accreditation for Corrections as it relates to health concerns.

(e)(1) The Director of the Department of Health shall present a list of findings of the random health inspections to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within one (1) month after completing the random health inspections.

(2)(A) In the event the General Assembly is in session, the Director of the Department of Health shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Committee on Children and Youth.

(B) The complete report, including, but not limited to, statistics shall be made available to the public.

(f)(1) The Director of the Department of Human Services or the division shall file the report, along with a response not to exceed two (2) pages, to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within thirty (30) days after receiving an inspection report prepared by the Department of Health.

(2) In the event the General Assembly is in session, the Director of the Department of Human Services shall provide the response to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Committee on Children and Youth.

(3) The response shall include a plan of correction and suggest a means by which the Department of Human Services or the division will correct any deficiencies within thirty (30) days of the filing of the report or within the time frame determined by the Department of Health to ensure the health and safety of the juveniles housed at the facility.



(g)(1) The Department of Human Services or the division shall develop an internal audit and review to evaluate and monitor all facilities of the division.

(2) The Department of Health will cooperate in training or assisting the Department of Human Services or the division in developing the process as it relates to health concerns.

(3) Included in its quarterly performance reports, the Department of Human Services or the division shall report on its progress to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(4) In the event the General Assembly is in session, the Director of the Department of Human Services shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Committee on Children and Youth.

(h) The Director of the Department of Human Services shall be required to close any facility when deficiencies are deemed by the Department of Health to be a danger to the health or safety of juveniles housed at such a facility.

(i) The Department of Human Services shall reimburse all expenses and costs to the Department of Health necessary to carry out the provisions of this subchapter.

(j) Those facilities operated under contract with the division that are required by another provision of state or federal law to be inspected shall not be subject to the provisions of this subchapter.

**History.** Acts 1999, No. 770, § 1; 2005, No. 1186, § 1.

**A.C.R.C. Notes.** As enacted, subsection (d) began: "On or before the effective date of this act".

As enacted, subdivision (g)(1) ended: "by January 1, 2000."

**Amendments.** The 2005 amendment redesignated former (b) as present (b)(1); substituted "compliance with" for "those inspections provided for in the current

Standards for Juvenile Training Schools published by the American Correction Association in cooperation with the Commission on Accreditation for Corrections" at the end of present (b)(1); added (b)(1)(A)-(F) and (b)(2); and, in (d), substituted "standards as in effect on January 1, 2005" for "current Standards for Juvenile Training Schools" and "Correctional" for "Correction."

## 9-28-302. Security inspections.

(a)(1) In order to assure that citizens of the State of Arkansas, the juveniles committed to facilities operated by or under contract with the Division of Youth Services of the Department of Human Services, and the employees of the facilities are protected from injury and harm, the Director of the Department of Correction or a duly authorized agent is authorized to enter the controlled premises and conduct random and unannounced security inspections of the facilities.

(2) The inspection shall include, but is not limited to, a review of:

(A) The security measures in place to prevent escapes by the juveniles;

(B) The security measures in place to prevent unauthorized persons from entering the facilities; and

(C) The use of force by employees of the facilities.

(b) Inspections shall include, but shall not be limited to, those standards as provided for in the current Standards for Juvenile Training Schools published by the American Correction Association in cooperation with the Commission on Accreditation for Corrections.

(c) The inspections, while random, shall be performed at least one (1) time per calendar year with specific follow-up inspections by the Department of Correction to monitor deficiencies and corrections as determined by the Department of Correction.

(d) On or before July 30, 1999, the Department of Human Services shall adopt the current Standards for Juvenile Training Schools published by the American Correction Association in cooperation with the Commission on Accreditation for Corrections as it relates to safety concerns.

(e)(1) The Director of the Department of Correction shall present a list of findings of the random security inspections to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within one (1) month after conducting the random security inspections.

(2) In the event the General Assembly is in session, the Director of the Department of Correction shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Committee on Children and Youth.

(3) The complete report including, but not limited to, statistics shall be made available to the public.

(f)(1) The Director of the Department of Human Services or the division shall file the report, along with a response not to exceed two (2) pages, to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within thirty (30) days of receiving an inspection report prepared by the Department of Correction.

(2) In the event the General Assembly is in session, the Director of the Department of Human Services shall provide the response to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Committee on Children and Youth.

(3) The response shall include a plan of correction and suggest a means by which the Department of Human Services or the division will correct any deficiencies within thirty (30) days of the filing of the report or within the time frame determined by the Department of Correction to ensure the health and safety of the juveniles housed at the facility.

(g)(1) The Department of Human Services or the division shall develop an internal audit and review to evaluate and monitor all facilities of the division.

(2) The Department of Correction will cooperate in training or assisting the Department of Human Services or the division in developing this process as it relates to security concerns.

(3)(A) In its quarterly performance reports, the Department of Human Services or the division shall report on its progress to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(B) In the event the General Assembly is in session, the Director of the Department of Human Services shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Committee on Children and Youth.

(h) The Director of the Department of Human Services shall be required to close any facility when deficiencies are deemed by the Department of Correction to be a danger to the health or safety of juveniles housed at such facility.

(i) The Department of Human Services shall reimburse all expenses and costs to the Department of Correction necessary to carry out the provisions of this subchapter.

(j) Those facilities operated under contract with the division that are required to be inspected by another provision of state or federal law shall not be subject to the provisions of this subchapter.

**History.** Acts 1999, No. 770, § 2.

**A.C.R.C. Notes.** As enacted, subsection (g)(1) ended: “by January 1, 2000.”

## SUBCHAPTER 4 — CHILD WELFARE AGENCY LICENSING ACT

### SECTION.

- 9-28-401. Short title.
- 9-28-402. Definitions.
- 9-28-403. Child Welfare Agency Review Board — Creation — Authority.
- 9-28-404. Child Welfare Agency Review Board — Composition.
- 9-28-405. Child Welfare Agency Review Board — Duties.
- 9-28-406. Division enforcement duties.
- 9-28-407. Licenses required and issued.
- 9-28-408. Church-related exemption.
- 9-28-409. Criminal record and child maltreatment checks.

### SECTION.

- 9-28-410. Foster care placements.
- 9-28-411. Foster children and educational issues.
- 9-28-412. Department of Human Services — Power to obtain information.
- 9-28-413. Smoking in the presence of foster children.
- 9-28-414. Public disclosure of information on deaths and maltreatment.

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**A.C.R.C. Notes.** Pursuant to § 1-2-207, the amendments of § 9-28-406 by Acts 1997, Nos. 179 and 250 were superseded by the repeal of this subchapter by Acts 1997, No. 1041; and the amendment of § 9-28-411 by Acts 1997, No. 1234 was deemed to be superseded by the repeal by Acts 1997, No. 1041.

**Publisher’s Notes.** As to jurisdiction of

the circuit court over certain proceedings, see § 9-27-306.

Former subchapter 4, the Child Placement Agency Licensing Act, was repealed by Acts 1997, No. 1041, § 12. The subchapter was derived from the following sources:

9-28-401. Acts 1983, No. 389, § 1; A.S.A. 1947, § 83-1209.



9-28-402. Acts 1983, No. 389, §§ 2, 7; 1985, No. 880, § 2; A.S.A. 1947, §§ 83-1210, 83-1215.

9-28-403. Acts 1983, No. 389, §§ 4, 7; 1985, No. 880, § 2; A.S.A. 1947, §§ 83-1212, 83-1215.

9-28-404. Acts 1983, No. 389, § 13; A.S.A. 1947, § 83-1221; Acts 1991, No. 761, § 1.

9-28-405. Acts 1983, No. 389, § 12; A.S.A. 1947, § 83-1220.

9-28-406. Acts 1983, No. 389, § 11; A.S.A. 1947, § 83-1219; Acts 1997, No. 179, § 7; 1997, No. 250, § 53.

9-28-407. Acts 1983, No. 389, § 9; A.S.A. 1947, § 83-1217.

9-28-408. This section was previously repealed by Acts 1991, No. 761, § 4. The section was derived from Acts 1983, No. 389, § 3; A.S.A. 1947, § 83-1211.

9-28-409. Acts 1983, No. 389, §§ 5-7; 1985, No. 880, §§ 1, 2; A.S.A. 1947, §§ 83-1213 — 83-1215; Acts 1991, No. 628, § 1.

9-28-410. Acts 1983, No. 389, § 8; 1985, No. 880, § 3; A.S.A. 1947, § 83-1216.

9-28-411. Acts 1983, No. 389, § 10; A.S.A. 1947, § 83-1218; Acts 1997, No. 1234, § 2.

9-28-412. Acts 1989, No. 941, § 1.

**Cross References.** Adoption in general, § 9-9-101 et seq.

Child care facility licensing, § 20-78-201 et seq.

Revised Uniform Adoption Act, § 9-9-201 et seq.

**Effective Dates.** Acts 2005, No. 874, § 3: Mar. 15, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the best interest of the children of Arkansas that the effectiveness of this act shall be immediate; that in the event of an extension of the regular session, the delay in the effective date of this act could do irreparable harm to the children of this state as well as to inter-

fere with the proper administration and provision of essential governmental programs; and that this act is immediately necessary to ensure that the placement of children removed from their homes is made in the best interests of the children who are removed from their homes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 888, § 3: Mar. 16, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is essential that the State of Arkansas maintains sufficient facilities within the state for the care and treatment of children with co-occurring substance abuse and psychiatric disorders; and that this act is immediately necessary to clarify that the state shall not negatively discriminate between the licensees that provide psychiatric treatment only and the licensees that provide the care and treatment of children with co-occurring substance abuse and psychiatric disorders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**A.L.R.** Social worker malpractice. 58 A.L.R.4th 977.

**U. Ark. Little Rock L.J.** Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

### CASE NOTES

#### **Federal Liability.**

State immunity law cannot be used as a shield from liability under federal law. *Norfleet v. Arkansas Dep't of Human Servs.*, 989 F.2d 289 (8th Cir. 1993).

It was clearly established in 1991 that

the state had an obligation to provide adequate medical care, protection and supervision to a foster child, and the failure to do violated 42 U.S.C. § 1983. *Norfleet v. Arkansas Dep't of Human Servs.*, 989 F.2d 289 (8th Cir. 1993).

#### **9-28-401. Short title.**

This subchapter shall be known as the "Child Welfare Agency Licensing Act".

**History.** Acts 1997, No. 1041, § 1.

### RESEARCH REFERENCES

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

#### **9-28-402. Definitions.**

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons that has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Division of Children and Family Services of the Department of Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

- (A) Revocation of license;
- (B) Suspension of license;
- (C) Conversion of license from regular or provisional status to probationary status;
- (D) Imposition of a civil penalty;
- (E) Denial of application; or
- (F) Reduction of licensed capacity;

(3) "Alternative compliance" means a request for approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a regulation, provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the regulation;

(4) "Board" means the Child Welfare Agency Review Board;

(5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:

- (A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Department of Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child welfare agency" means any person, corporation, partnership, voluntary association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

(A) Receives a total number of six (6) or more unrelated minors for care on a twenty-four-hour basis for the purpose of ensuring the minors receive care, training, education, custody, or supervision, whether or not there are six (6) or more children cared for at any single physical location;

(B) Places any unrelated minor for care on a twenty-four-hour basis with persons other than themselves; or

(C) Plans for or assists in the placements described in subdivision (a)(6)(B) of this section;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, who engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(8)(A) "Class A violation" means violations of essential standards, including those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(9) "Class B violation" means any other violations of standards that are not Class A violations;

(10) "Division" means the division within the Department of Human Services that shall be designated by the Director of the Department of Human Services to administer this subchapter;

(11) "Emergency child care" means any residential child care facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

(12) "Exempt child welfare agency" means any person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, who otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of



obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

(A) A facility or program owned or operated by an agency of the United States Government;

(B)(i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities.

(ii) In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards. Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards.

(iii) Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

(C) A facility or program owned or operated by or under contract with the Department of Correction;

(D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;

(E) Any facility governed by the Department of Human Services State Institutional System Board or its successor;

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

(G) Any facility licensed as a family home pursuant to § 20-48-601 et seq.;

(H) Any boarding school as defined in this section;

(I) Any temporary camp as defined in this section;

(J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services of the Department of Human Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and that complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services of the Department of Human Services; and

(M) Any developmental disabilities services waiver provider licensed under § 20-48-208 or § 20-48-601 et seq.;

(13) "Foster home" means a private residence of one (1) or more family members that receives from a child placement agency any minor child who is unattended by a parent or guardian in order to provide care, training, education, custody, or supervision on a twenty-four-hour basis, not to include adoptive homes;

(14) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older;

(15) "Minimum standards" means those rules and regulations as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(16) "Provisional foster home" means a foster home opened for no more than six (6) months by the division for a relative of a child in the custody of the Division of Children and Family Services after it:

(A) Conducts a health and safety check, including a central registry check and a criminal background check or a check with local law enforcement, of the relative's home;

(B) Performs a visual inspection of the home of the relative to verify that the relative will meet the standards for opening a regular foster home;

(17) "Psychiatric residential treatment facility" means a residential child care facility in a nonhospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a psychiatrist, for children who are emotionally disturbed and in need of daily nursing services, psychiatrist's supervision, and residential care but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital;

(18) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(19) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(20) "Residential child care facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated minors, excluding foster homes that have six (6) or more minors who are all related to each other but who are not related to the foster parents;

(21)(A) "Substantial compliance" means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(22) "Temporary camp" means any facility or program providing twenty-four-hour care or supervision to children that meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement; and

(23) “Unrelated minor” means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction.

**History.** Acts 1997, No. 1041, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1; 2007, No. 634, § 1; 2009, No. 723, § 1.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, Nos. 1766 and 2234. Subdivisions (22) and (23) of this section were also amended by Acts 2005, No. 874, § 2, to read as follows: “(22) ‘Provisional foster home’ means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services for a relative of a child in the custody of the division after the division conducts: (A) A health and safety check, including a central registry check and a criminal background check or check with local law enforcement, on the relative and the relative’s home; and (B) A visual inspection of the home of the relative;

“(23) ‘Relative’ means a person within

the fifth degree of kinship by virtue of blood or adoption.”

**Amendments.** The 2005 amendment by No. 1766 added “or” in (2)(E); inserted present (12)(L), (12)(M), (16) and (18); and redesignated the remaining subdivisions accordingly.

The 2005 amendment by No. 2234, in (16), substituted “physician licensed by the Arkansas State Medical Board who has experience in the practice of psychiatry” for “psychiatrist” and “physician’s” for “psychiatrist’s.”

The 2007 amendment added “excluding foster homes that have six (6) or more minors who are all related to each other but who are not related to the foster parents” at the end of (20), and made a related change.

The 2009 amendment substituted “regular or provisional status to probationary status” for “regular status to provisional status” in (2)(C).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

### 9-28-403. Child Welfare Agency Review Board — Creation — Authority.

(a)(1) There is created the Child Welfare Agency Review Board to serve as the administrative body to carry out the provisions of this subchapter.

(2) The board shall have the authority to promulgate rules and regulations to enforce the provisions of this subchapter.

(b) The board may also identify and implement alternative methods of regulation and enforcement that may include, but not be limited to:

(1) Expanding the types and categories of licenses issued for programs falling within the definition of “child welfare agency”, as may be required by changes in the types of child welfare programs that may occur, and to promulgate separate regulations for each category of license as it may deem proper;

(2) Using the standards of other licensing authorities or compliance-reviewing professionals as being equivalent to partial compliance with board-promulgated rules, when those standards have been shown to predict compliance with the board-promulgated rules; and



(3) Using an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

(c)(1) The division is designated as the governmental agency charged with the enforcement of the provisions of this subchapter.

(2) Only the division, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except when otherwise provided by law.

(d) When any person, corporation, partnership, voluntary association, or other entity shall be found to operate or assist in the operation of a child welfare agency that has been licensed by the board or has had the license denied, revoked, or suspended by the board, and therefore has been ordered to cease and desist operation in accordance with the provisions of this subchapter, the board shall have the right to go into the circuit court in the jurisdiction in which the child welfare agency is being operated and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, corporation, partnership, voluntary association, or other entity from operating the child welfare agency.

(e) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all proceedings brought under this subchapter, except that the following provisions shall control during adverse action hearings to the extent that they conflict with the Arkansas Administrative Procedure Act § 25-15-201 et seq.:

(1) All parties to an adverse action shall be entitled to engage in and use formal discovery as provided for in Rules 26, 28 — 34, and 36 of the Arkansas Rules of Civil Procedure including:

- (A) Requests for admission;
- (B) Requests for production of documents and things;
- (C) Written interrogatories; and
- (D) Oral and written depositions; and

(2) All evidentiary rulings in an adverse action hearing shall be governed by the Arkansas Rules of Evidence with respect to the following types of evidence:

(A) The requirement of personal knowledge of a witness as required by Rule 602;

(B) The admissibility of character evidence as set forth by Rules 608 and 609;

(C) The admissibility of opinion evidence as set forth by Rules 701 — 703; and

(D) The admissibility of hearsay evidence as set forth by Rules 801 — 806.

(f)(1) Requests for subpoenas shall be granted by the Chief Counsel of the Department of Human Services or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(2) Subpoenas provided for in this section shall be served in the manner as now provided by law, returned, and a copy made and kept by the department.

(3) The fees and mileage for officers serving the subpoenas and witnesses answering the subpoenas shall be the same as now provided by law.

(4) Witnesses duly served with subpoenas issued under this section who shall refuse to testify or give evidence may be cited on an affidavit through application of the chief counsel of the department to the Pulaski County Circuit Court or any circuit court of the state where the subpoenas were served.

(5) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

**History.** Acts 1997, No. 1041, § 3; 2009, No. 723, §§ 2, 3.

**Amendments.** The 2009 amendment rewrote (e); and added (f).

### **9-28-404. Child Welfare Agency Review Board — Composition.**

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

- (1) The director of the division or his or her designee;
- (2) One (1) representative from a privately owned, licensed child placement agency with expertise in foster care;
- (3) One (1) representative from a privately owned, licensed child placement agency with expertise in adoptions;
- (4) Two (2) representatives from licensed residential child care facilities;
- (5) One (1) representative from a licensed psychiatric residential treatment facility;
- (6) One (1) representative from a licensed emergency shelter; and
- (7) One (1) representative from the public at large.

(b) Members shall be appointed by the Governor for four-year terms expiring on March 1 of the appropriate year, except that in making initial appointments, one (1) of the members representing licensed child placement agencies and the member representing the public at large shall serve for two (2) years and two (2) of the members representing residential facilities shall serve for three (3) years.

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings, to be payable from funds appropriated for the maintenance and operation of the division.

(d) The members of the board shall select a chair from among its voting membership.

**History.** Acts 1997, No. 1041, § 4; 2001, No. 1414, §§ 1, 2; 2003, No. 1157, § 2.

**Cross References.** Compensation of state boards, § 25-16-901 et seq.

**9-28-405. Child Welfare Agency Review Board — Duties.**

(a)(1) The Child Welfare Agency Review Board shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3)(A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1) The board shall have exclusive authority to promulgate rules that:

(A) Promote the health, safety, and welfare of children in the care of a child welfare agency;

(B) Promote safe and healthy physical facilities;

(C) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(D) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;

(E) Ensure adequate and healthy food service;

(F) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;

(G) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(H) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(I) Require the compilation of reports and making those reports available to the Division of Youth Services of the Department of Human Services when the board determines it is necessary for compliance determination or data compilation;

(J) Ensure that a child placement agency:

(i) Treats clients seeking or receiving services in a professional manner, as defined by rules promulgated pursuant to this section; and



(ii) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Division of Children and Family Services of the Department of Human Services where complaints can be lodged;

(K) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and

(L) Establish rules governing retention of licensing records maintained by the division.

(2) This subchapter shall not be construed to prevent a licensed child welfare agency from adopting and applying internal operating procedures that meet or exceed the minimum standards required by the board.

(d)(1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:

(A) Interfering with the religious teaching or instruction offered by a child welfare agency;

(B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;

(C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services;

(D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency; or

(E) Prohibiting the use of corporal discipline.

(2)(A)(i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the division in writing of the belief and the specific rule that violates the belief.

(ii) The rule shall be presumptively invalid as applied to that child welfare agency.

(B)(i) The division may then file a petition before the board seeking to enforce the rule.

(ii) The division shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.

(e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.

(f)(1)(A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.

(B) The board may deny, suspend, convert, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:

(i) Fails to comply with the provisions of this subchapter or any published rule of the board relating to child welfare agencies;

(ii) Furnishes or makes any statement or report to the division that is false or misleading;

(iii) Refuses or fails to submit required reports or to make available to the division any records required by it in making an investigation of the agency for licensing purposes;

(iv) Refuses or fails to submit to an investigation or to reasonable inspection by the division;

(v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by rules promulgated pursuant to this section;

(vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or

(viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.

(2) Any denial of application or revocation or suspension of a license shall be effective when made.

(g) The board shall review the qualifications of persons required to have background checks under this subchapter.

(h)(1) The board may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2)(A) If the board grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) Violations of those terms shall constitute a rule violation.

(i)(1)(A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B)(i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or regulation.

(3) The board may impose civil penalties as follows:

(A)(i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars (\$500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars (\$2,500) for Class A violations occurring in any one (1) calendar month; and

(B)(i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars (\$100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars (\$500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j)(1)(A) The board shall notify the applicant or licensee of the division's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) Nothing in this section shall prevent the division or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a postdeprivation adverse action hearing.

(k)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee written findings of fact and conclusions of law articulating the board's decision.



(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(1)(1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record that constitute a substantial possibility of reversal.

(2)(A) Thereafter, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules and regulations promulgated pursuant to this section and all public comment received in writing by the division in response shall be made available for review by the Senate Interim Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n)(1)(A) The validity or application of any rule or regulation promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3)(A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person or facility providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

(o)(1) The Department of Human Services shall maintain a website accessible to the general public that contains information on child placement agencies.

(2) The website shall contain:

(A) The name, phone number, and address of all child placement agencies licensed by the board;

(B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and

(C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

**History.** Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2; 2009, No. 723, §§ 4–6.

**Amendments.** The 2005 amendment by No. 2225 added (a)(3), (c)(10) and (c)(11); inserted “or issue letters of reprimand or caution to a child welfare agency” in (f)(1)(B); added (f)(1)(B)(vi)-(viii); added (i)(1)(B); substituted “five hundred dollars (\$500)” for “one hundred dollars (\$100)” in (i)(3)(A)(i); in (i)(3)(A)(ii), inserted “civil penalties of” and substituted “two thousand five hundred dollars (\$2,500)” for “five hundred dollars (\$500)”;

substituted “one hundred dollars (\$100)” for “fifty dollars (\$50.00)” in (i)(3)(B)(i); in (i)(3)(B)(ii), inserted “civil penalties” and substituted “five hundred dollars (\$500)” for “two hun-

dred fifty dollars (\$250)”;

added (o); and made minor stylistic changes.

The 2005 amendment by No. 2234 inserted “have exclusive authority” in (c); substituted “under this subchapter” for “thereunder” in (c)(6); added (c)(10) [now (c)(12)]; and made related changes.

The 2009 amendment deleted “and regulations” following “rules” in (a)(1) and (c)(1); inserted “conversion” in (a)(1); redesignated (c) and inserted (c)(2); substituted “rules” for “regulations” in (c)(1)(J)(i) and (f)(1)(B)(vi); in (f)(1)(B), inserted “convert” in the introductory language, made a related change, and deleted “or regulation” following “rule” in (f)(1)(B)(i).

## CASE NOTES

### Scope of Authority.

The Child Agency Review Board violated the separation of powers doctrine and exceeded the authority given to it by the Arkansas General Assembly when it promulgated § 200.3.2 of the Minimum Licensing Standards for Child Welfare Agencies, which prohibited persons with adult homosexual members in their household from becoming foster parents;

although the Board was required to promulgate regulations to protect the health, safety, and welfare of foster children, there was no evidence that living with an adult homosexual placed foster children in danger, and the Board was not required to issue regulations based upon moral standards or beliefs. *Dep’t of Human Servs. v. Howard*, 367 Ark. 55, 238 S.W.3d 1 (2006).

### 9-28-406. Division enforcement duties.

(a)(1) The division shall advise the Child Welfare Agency Review Board regarding proposed rules and regulations.

(2) The division shall obtain comments from the board prior to initiating the rule promulgation process.

(b)(1) The board is authorized to make an inspection and investigation of any proposed or operating child welfare agency and of any personnel connected with that agency to the extent that an inspection and investigation are necessary to determine whether the child welfare agency will be or is being operated in accordance with this subchapter and the rules and regulations promulgated by the board.



(2) The board may delegate this authority to any agencies of the State of Arkansas whom the board deems proper.

(c)(1) The division or any other public agency having authority or responsibility with respect to child maltreatment shall have the authority to investigate any alleged or suspected child maltreatment in any child welfare agency, whether licensed or exempt.

(2) Nothing contained in this section shall be construed to limit or restrict that authority.

(d)(1) The division shall assist licensees and applicants in complying with published rules and regulations by issuing advisory opinions regarding matters of rule compliance when so requested.

(2) The procedure for issuing advisory opinions shall be as follows:

(A)(i) Any licensee or applicant for a license may submit a written request for an advisory opinion on whether or not a practice in any planned or existing child welfare agency complies with the rules promulgated pursuant to this subchapter.

(ii) The division must respond to the request in writing within twenty (20) business days of receiving the request.

(iii) If the division's response is that the subject of the request would not comply with published standards, the division shall suggest an alternative practice that in its opinion would comply with published standards when it is possible to do so; and

(B)(i) A written opinion required in subdivision (d)(2)(A) of this section is binding on the division as a declaratory order if the applicant or licensee has acted in reliance on the opinion.

(ii) Notwithstanding the foregoing, in no event shall the advisory opinion be binding on the board if the compliance issue that is the subject of the advisory opinion is presented to the board for review.

(e)(1) The division shall issue corrective action notices following inspections of child welfare agencies as provided in this subsection.

(2) If the division finds that a child welfare agency has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or welfare of the persons served by the program, the division shall issue a corrective action notice to the child welfare agency. The corrective action notice must require the licensee to outline a corrective action plan. The division's corrective action notice shall contain:

(A) A factual description of the conditions that constitute a violation of the law or rule;

(B) The specific law or rule violated; and

(C) A reasonable time frame within which the violation must be corrected.

(3)(A)(i) If the child welfare agency believes that the contents of the division's corrective action notice are in error, the child welfare agency may ask licensing authorities to reconsider the parts of the corrective action notice that are alleged to be in error.

(ii) The request for reconsideration must be in writing, delivered by certified mail, specify the parts of the corrective action notice that



are alleged to be in error, explain why they are in error, and include documentation to support the allegation of error.

(B)(i) The division shall render a decision on the request for reconsideration within fifteen (15) working days after the date the request for reconsideration was received.

(ii) The licensee's request for reconsideration and supporting documentation shall be retained by the division and made a part of the licensee's record.

(4)(A) If upon reinspection, the division finds that the licensee has corrected the violation or violations specified in the corrective action notice, the division employee shall indicate this correction and the date the correction was verified in the licensee's file.

(B) If upon reinspection, the division finds that the licensee has not corrected the violations specified in the corrective action order within the required time frame, the division may in its discretion petition the board to impose appropriate adverse action against the licensee.

(C) In the case of an applicant for a license, if the applicant has not corrected the violations in a previously issued corrective action notice, the division may recommend denial of the application for a child welfare agency license.

**History.** Acts 1997, No. 1041, § 6.

## **9-28-407. Licenses required and issued.**

(a)(1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest to operate or assist in the operation of a child welfare agency that has not been licensed by the Child Welfare Agency Review Board from licensing pursuant to this subchapter.

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted pursuant to this subchapter shall be deemed to fall within the meaning of § 20-10-101 for any purpose.

(3) Any child welfare agency capacity licensed or permitted by the board as of March 1, 2003, whether held by the original licensee or by a successor in interest to the original licensee, is exempted from:

(A) Obtaining any license or permit from the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services;

(B) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at the capacity licensed by the board as of March 1, 2003; and

(C) Obtaining any permit from the agency or the commission to operate at any future expanded capacity serving only non-Arkansas residents unless a permit is required by federal law or regulation.

(4) Any further expansion of capacity by a licensee of the board shall require a license or permit from the Office of Long-Term Care and the agency unless the bed expansion is exempted under subdivisions (a)(3)(A) — (C) of this section.

(5)(A) Subdivisions (a)(3) and (4) of this section shall be construed to include a child welfare agency that is licensed or permitted by the board as a residential facility as of March 1, 2003, if the licensee then met and continues to meet the following criteria:

(i) The licensee is a nonhospital-based residential facility that specializes in providing treatment and care for seriously emotionally disturbed children under eighteen (18) years of age who have co-occurring substance abuse and psychiatric disorders;

(ii) The licensee possesses accreditation from at least one (1) of the following national accreditation entities:

(a) The Commission on Accreditation of Rehabilitation Facilities;

(b) The Council on Accreditation of Services for Families and Children; or

(c) The Joint Commission;

(iii) The licensee is licensed by the Office of Alcohol and Drug Abuse Prevention or its successor; and

(iv) The licensee is operating a nontraditional program that is approved by the Department of Education.

(B)(i) Licensees described in subdivision (a)(5)(A) of this section shall be eligible for reimbursement by the Arkansas Medicaid Program under the same methodology and at the same reimbursement rates as residential treatment facilities that do not specialize in treating children with co-occurring substance abuse and psychiatric disorders.

(ii) However, Medicaid payments shall be reduced by payments received from other payors in connection with Medicaid-covered care and treatment furnished to Medicaid recipients.

(b)(1) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter, to knowingly violate the orders issued by the board, or to advertise the provision of child care or child placement when not licensed under this subchapter to provide those services, unless determined by the board to be exempt from licensure under this subchapter.

(2) Any violation of this section shall constitute a Class D felony.

(c)(1) Any person, partnership, group, corporation, organization, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, desiring to operate a child welfare agency shall first make application for a license or a church-operated exemption for the facility to the board on the application forms furnished for this purpose by the board.

(2)(A) The division shall also furnish the applicant with a copy of this subchapter and the policies and procedures of the board at the time the person requests an application form.

(B) The child welfare agency shall submit a separate application for license for each separate physical location of a child welfare agency.

(d)(1) The division shall review, inspect, and investigate each applicant to operate a child welfare agency and shall present a recommendation to the board whether the board should issue a license and what the terms and conditions of the license should be.

(2) The division shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

(A) A completed application form prepared and furnished by the board;

(B) A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;

(C) A complete personnel list with verifications of qualifications and experience;

(D) Substantiation of the financial soundness of the agency's operation; and

(E) A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care.

(e)(1) The board shall issue a regular license that shall be effective until adverse action is taken on the license if the board finds that:

(A) The applicant for a child welfare agency license meets all licensing requirements; or

(B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.

(2)(A) The board may issue a provisional license that shall be effective for up to one (1) year if the board finds that the applicant meets all essential standards but the applicant requires more frequent monitoring because the applicant's ability or willingness to meet all standards within a reasonable time has not been favorably determined.

(B) The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.

(f)(1) A license to operate a child welfare agency shall apply only to the address and location stated on the application and license issued, and it shall be transferable from one (1) holder of the license to another or from one (1) place to another.

(2) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures must be followed:

(A) The seller shall notify the division of the sale at least thirty (30) days prior to the completed sale;



(B) The seller shall remain responsible for the operation of the child welfare agency until such time as the agency is closed or a license is issued to the buyer;

(C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations or deficiencies occurring before the transfer of a license to the buyer;

(D) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(E) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the office and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission, shall apply in their entirety to the new owner of the child welfare agency.

(g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:

(1) The full legal name of the entity holding the license, including the business name, if different;

(2) The address of the child welfare agency;

(3) The effective date and expiration date of the license;

(4) The type of child welfare agency the licensee is authorized to operate;

(5) The maximum number and ages of children that may receive services from the agency, if the agency is not a child placement agency;

(6) The status of the license, whether regular, provisional, or probationary; and

(7) Any special conditions or limitations of the license.

(h)(1) Reports, correspondence, memoranda, case histories, or other materials, including protected health information, compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records, shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:

(A) To the director as required by regulation;

(B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(C) To multidisciplinary teams under § 12-18-106(a);

(D)(i) To the child's parent, guardian, or custodian.

(ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child.

(iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;

(E) To the child;

(F)(i) To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.

(ii) "Health care providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;

(G) To school personnel and day care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;

(H)(i) To foster parents, the foster care record for foster children currently placed in their home.

(ii) However, information about the parents or guardians and any siblings not in the foster home shall not be released;

(I)(i) To the board.

(ii) However, at any board meeting no information that identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;

(J) To the Division of Children and Family Services of the Department of Human Services, including child welfare agency licensing specialists;

(K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(L) Upon presentation of an order of appointment, to a court-appointed special advocate;

(M) To the attorney ad litem for the child;

(N) For law enforcement or the prosecuting attorney upon request;

(O) To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(P) In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;

(Q) For purposes directly connected with the administration of any of the state plans as outlined at 42 U.S.C. § 671(a)(8), as in effect January 1, 2001;

(R) For the administration of any other federal or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

(S)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

(T) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(U) To a person, provider, or government entity identified by the licensee or the state agency as having services needed by the child or his or her family; or

(V) To volunteers authorized by the licensee or the state agency to provide support or services to the child or his or her family at the

discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services.

(2) Foster home and adoptive home records are confidential and shall not be released except:

- (A) To the foster parents or adoptive parents;
- (B) For purposes of review or audit, by the appropriate federal or state agency;
- (C) Upon allegations of child maltreatment in the foster home or adoptive home, to the investigating agency;
- (D) To the board;
- (E) To the Division of Children and Family Services of the Department of Human Services, including child welfare agency licensing specialists;
- (F) To law enforcement or the prosecuting attorney upon request;
- (G) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;
- (H)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.
- (ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services; or
- (I) To the attorney ad litem and court-appointed special advocate, the home study on the adoptive family selected by the Department of Human Services to adopt the juvenile.

(3)(A) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this subsection.

(B) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(C) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the child or his or her parent or guardian.

(i) Foster parents approved by a child placement agency licensed by the Department of Human Services shall not be liable for damages caused by their foster children, nor shall they be liable to the foster children nor to the parents or guardians of the foster children for injuries to the foster children caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(j) Volunteers approved by the Department of Human Services who transport foster children or clients of the Department of Human Services or who supervise visits at the request of the Department of Human Services shall not be liable to the foster children or the clients nor to the parents or guardians of any foster children for injuries to the clients or the foster children caused by the acts or omissions of the volunteers unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.



**History.** Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4; 2007, No. 634, § 2; 2009, No. 723, § 7; 2009, No. 758, § 16.

**A.C.R.C. Notes.** Acts 2005, No. 888, § 1, provided: "Child welfare agencies operating as residential facilities providing treatment to children with co-occurring substance abuse and psychiatric disorders are covered by the amendment of Arkansas Code §§ 9-28-407(a) and Arkansas Code § 20-8-107(c) by Act 1285 of 2003 so long as they were providing such care on or before March 1, 2003, and also meet the requirements of this act."

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2005 amendment by No. 888 added present (a)(5).

The 2005 amendment by No. 1766 added (h)(2)(I) and made related changes.

The 2005 amendment by No. 2234 deleted "(8)" following "§ 20-10-101" in (a)(2); in (a)(3), inserted "capacity" and "whether held by the original license or by a successor in interest to the original licensee"; in (b), inserted the subdivision designations and substituted "from licensure under this subchapter" for "therefrom" in present (b)(1); inserted the subdivision designations in (c); substituted

"division" for "Division of Medical Services" throughout (c) and (d); in (d), inserted the (1) and (2) designations; redesignated former (d)(1)-(5) as present (d)(2)(A)-(E); and, in present (d)(2), substituted "shall" for "must"; and rewrote (f).

The 2007 amendment substituted "Department of Health and Human Services" for "Department of Human Services" throughout the section; in (h), inserted "including protected health information" in (1), substituted "Children and Family Services" for "Youth Services" in (1)(J), substituted "upon request" for "at the discretion of the licensee or state agency and if deemed to be in the best interest of the child" in (1)(N), inserted "in their official capacity" in (1)(S)(i) and (2)(H)(i), and added (1)(U), (1)(V), and (3)(C); added (j); and made related changes.

The 2009 amendment by No. 723 inserted "or probationary" in (g)(6), and made related changes.

The 2009 amendment by No. 758 substituted "§ 12-18-106(a)" for "§ 12-12-502(b)" in (h)(1)(C).

**Effective Dates.** Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

### 9-28-408. Church-related exemption.

(a)(1) Any church or group of churches exempt from the state income tax levied by § 26-51-101 et seq. when operating a child welfare agency shall be exempt from obtaining a license to operate the facility by the receipt by the Child Welfare Agency Review Board of written request therefor, together with the written verifications required in subsection (b) of this section.

(2) A written request shall be made by those churches desiring exemption to the board, which is mandated under the authority of this subchapter to license all child welfare agencies.

(b)(1) In order to maintain an exempt status, the child welfare agency shall state every two (2) years in written form signed by the persons in charge that the agency has met the fire, safety, and health

inspections and is in substantial compliance with published standards that similar nonexempt child welfare agencies are required to meet.

(2) Visits to review and advise exempt agencies shall be made as deemed necessary by the board to verify and maintain substantial compliance with all published standards for nonexempt agencies.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child are not endangered.

(c)(1) Any questions of substantial compliance with the published standards shall be reviewed by the board.

(2) Final administrative actions of the board shall be pursued by either party in the court of competent jurisdiction in the resident county of the facility under review.

(3) Challenge to the constitutionality or reasonableness of any regulation or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) As used in this section, the term “substantial compliance” and the term “is being operated in accordance with this subchapter” shall each mean that a church-operated exempt or a nonexempt child welfare agency is being operated within the minimum requirements for substantial compliance as promulgated by the board.

(2) It is the intent and purpose of this section that the term “substantial compliance” be applicable to all child welfare agencies.

**History.** Acts 1997, No. 1041, § 8.

### **9-28-409. Criminal record and child maltreatment checks.**

(a)(1) Each of the following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his or her state of residence and any state of residence in which the person has lived for the past six (6) years and in the person’s state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members ten (10) years of age and older, excluding children in foster care;

(D) An adoptive parent and all household members ten (10) years of age and older, excluding children in foster care;

(E) An owner having direct and unsupervised contact with children; and

(F) A member of the agency’s board of directors having direct and unsupervised contact with children.

(2) The board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency who has lived in Arkansas continuously for six (6) years or more shall be checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children; and

(D) A member of the agency's board of directors having direct and unsupervised contact with children.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board at a minimum of every two (2) years.

(3)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that Department of Arkansas State Police criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(4) All persons required to be checked with the Department of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who



reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(c)(1) Each of the following persons in a child welfare agency who has not lived in Arkansas continuously for the past six (6) years shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation for convictions of the offenses listed in this subchapter:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children; and

(D) A member of the agency's board of directors having direct and unsupervised contact with children.

(2)(A) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation for convictions of the offenses listed in this subchapter.

(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that the Federal Bureau of Investigation's criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(C) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d)(1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed by the Department of Human Services and shall sign the form that contains the following under oath before a notary public:

(A) Certification that the subject of the check consents to the completion of the check;

(B) Certification that the subject of the check has not been convicted of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare

agency due to information obtained by the check that indicates that the subject of the check has been convicted of, or is under pending indictment for, a crime listed in this subchapter; and

(E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. No. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Identification Bureau of the Department of Arkansas State Police for processing within ten (10) days of hiring the employee or volunteer, who shall remain under conditional employment or volunteerism until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Department of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of two (2) attempts by qualified law enforcement personnel, the board shall determine eligibility based upon a name check by the Department of Arkansas State Police and the Federal Bureau of Investigation.

(5)(A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of central registry and criminal records check.

(B)(i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

(ii) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(C) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e)(1) Except as provided in subdivision (d)(2) or subdivision (h)(1) of this section, no person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section shall be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to, or has been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court unless the conviction was vacated or reversed:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

- (C) Manslaughter as prohibited in § 5-10-104;
- (D) Negligent homicide as prohibited in § 5-10-105;
- (E) Kidnapping as prohibited in § 5-11-102;
- (F) False imprisonment in the first degree and false imprisonment in the second degree as prohibited in §§ 5-11-103 and 5-11-104;
- (G) Permanent detention or restraint as prohibited in § 5-11-106;
- (H) Battery in the first degree, battery in the second degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;
- (I) Aggravated assault as prohibited in § 5-13-204;
- (J) Assault in the first degree and assault in the second degree as prohibited in §§ 5-13-205 and 5-13-206;
- (K) Terroristic threatening in the first degree and terroristic threatening in the second degree as prohibited in § 5-13-301(a) and (b);
- (L) Any sexual offense as prohibited in § 5-14-101 et seq.;
- (M) Permitting abuse of a child as prohibited in § 5-27-221;
- (N) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree as prohibited in §§ 5-27-205 and 5-27-206;
- (O) Contributing to the delinquency of a minor as prohibited in § 5-27-209;
- (P) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, use of a child or consent to use of a child in sexual performance, and producing, directing, or promoting sexual performance by a child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- (Q) Incest as prohibited in § 5-26-202;
- (R) Interference with visitation as prohibited in § 5-26-501;
- (S) Interference with custody as prohibited in § 5-26-502;
- (T) Engaging in conduct with respect to controlled substances as prohibited in § 5-64-401;
- (U) Distribution to minors as prohibited in § 5-64-406;
- (V) Public display of obscenity as prohibited in § 5-68-205;
- (W) Prostitution as prohibited in § 5-70-102;
- (X) Promoting prostitution in the first degree, promoting prostitution in the second degree, and promoting prostitution in the third degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;
- (Y) Computer child pornography as prohibited in § 5-27-603;
- (Z) Computer exploitation of a child in the first degree as prohibited in § 5-27-605(a);
- (AA) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this section;
- (BB) Any felony or any misdemeanor involving violence, threatened violence, or moral turpitude; and



(CC) Any former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the aforementioned offenses.

(2)(A) Any person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be absolutely disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency during the period of his or her confinement, probation, or parole supervision.

(B) Except as provided in subdivision (h)(1) of this section, any person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision. The operator, volunteer, foster parent, adoptive parent, household member of a foster parent or an adoptive parent, member of any agency's board of directors, or an employee in a child welfare agency cannot petition the board unless the agency supports the petition. This presumption can be rebutted in the following manner:

(i)(a) The applicant must petition the board to make a determination that the applicant does not pose a risk of harm to any person.

(b) The applicant shall bear the burden of making such a showing; and

(ii) The board in its discretion may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having been convicted of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility. In making this determination, the board shall consider the following factors:

- (a) The nature and severity of the crime;
- (b) The consequences of the crime;
- (c) The number and frequency of crimes;
- (d) The relation between the crime and the health, safety, and welfare of any person, such as:
  - (1) The age and vulnerability of victims of the crime;
  - (2) The harm suffered by the victim; and
  - (3) The similarity between the victim and persons served by a child welfare agency;
- (e) The time elapsed without a repeat of the same or similar event;

(f) Documentation of successful completion of training or rehabilitation pertinent to the incident; and

(g) Any other information that bears on the applicant's ability to care for children or any other relevant information.

(C) The board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action and shall not be subject to review.

(f)(1) No foster child in the custody of the Department of Human Services shall be placed in the home of any foster or adoptive parent if the criminal records check reveals a felony conviction for:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) A crime against children, including child pornography; or

(D) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(2) No foster child in the custody of another state agency who is placed in Arkansas shall be placed in any home if the criminal records check reveals a felony conviction of an adult in the home for:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) A crime against children, including child pornography; or

(D) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(g)(1) No foster child in the custody of the Department of Human Services shall be placed in the home of any foster or adoptive parent if the criminal record check reveals a felony conviction for physical assault, battery, or a drug-related offense if the offense was committed within the past five (5) years.

(2) No foster child in the custody of another state agency who is placed in Arkansas shall be placed in any home if the criminal record check reveals a felony conviction of any adult in the home for physical assault, battery, or a drug-related offense if the offense was committed within the past five (5) years.

(h)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subdivision (e)(1) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (h)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree and second degree as prohibited in §§ 5-14-124 and 5-14-125;

(F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree as prohibited in §§ 5-27-205 and 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

(i)(1) Upon request by the Department of Human Services, local law enforcement shall provide the Department of Human Services with criminal background information on persons who have applied to be a provisional foster home, a regular foster home, or an adoptive home for the department.

(2) Upon request by the Department of Human Services, local law enforcement shall provide the Department of Human Services with criminal background information on persons whose home is being studied by the Department of Human Services.

**History.** Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1; 2007, No. 634, § 3; 2009, No. 723, §§ 8–10.

**Amendments.** The 2005 amendment by No. 1766, in (e)(1), substituted “subdivisions (d)(2) or (h)(1)” for “subdivision (d)(2)” and inserted “unless the conviction was vacated or reversed”; substituted “degree” for “degrees” in (e)(1)(F); inserted “unless the conviction is vacated or reversed” in (e)(2)(A); in (e)(2)(B), inserted “Except as provided in subdivision (h)(1) of this section,” and “unless the conviction is vacated or reversed”; inserted the (e)(2)(B)(i)(a) and (b) and (e)(2)(B)(ii) designations; deleted “served by the facility and is therefore qualified to serve in a child welfare agency” in present (e)(2)(B)(i)(a); substituted “to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency’s board of directors, or an employee in a child welfare agency” for “to serve in a child welfare agency” in (e)(2)(B)(ii); substituted “any person” for “persons served by a child welfare agency” in (e)(2)(B)(ii)(d); added “and” at the end of (e)(2)(B)(ii)(d)(2); substituted “from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency’s board of directors, or an employee in a

child welfare agency under” for “serving in a child welfare agency pursuant to” in (e)(2)(C); and added (h).

The 2005 amendment by No. 1923 substituted “subdivisions (d)(2) or (h)(1)” for “subdivision (d)(2)” in (e)(1); added “and” at the end of (e)(1)(BB); inserted “Except as provided in subdivision (h)(1) of this section” in (e)(2)(B); and added (h).

The 2007 amendment deleted (b)(1)(C) and (c)(1)(C), inserted present (d)(4)(B) and (i), and redesignated subdivisions accordingly; inserted “and all foster parents and foster home household members sixteen (16) years of age and older, excluding foster children” in (c)(1); inserted the next to last sentence in (e)(2)(B); substituted “5-27-206” for “5-27-204” in (h)(2)(F); and made related and stylistic changes.

The 2009 amendment, in (a), inserted “excluding children in foster care” in (a)(1)(C) and (a)(1)(D) and inserted “at a minimum” in (a)(4); in (b), inserted (b)(2), redesignated the subsequent subdivisions accordingly, rewrote present (b)(4), and deleted former (b)(4); in (c), rewrote the introductory language of (c)(1), inserted (c)(2)(A), and redesignated the subsequent subdivisions; in (d), inserted “or volunteer” and “or volunteerism” in (d)(2), deleted (d)(4)(B), redesignated the remaining subdivision, and substituted “two (2)”



for "three (3)" in present (d)(4); and made related changes.

**U.S. Code.** Pub. L. No. 92-544, referred

to in this section, is Act Oct. 25, 1972, 86 Stat. 1109. See 42 U.S.C. § 5119a.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.

## CASE NOTES

### Misconduct.

Although employee was discharged from his position at a residential facility for the psychiatric care of children because a central registry showed a report of child maltreatment, the listing demon-

strated no wrongful intent or evil design such as would constitute misconduct under § 11-10-514(a). *West v. Dir., Empl. Sec. Dep't*, 94 Ark. App. 381, 231 S.W.3d 96 (2006).

## 9-28-410. Foster care placements.

(a) The policy of the State of Arkansas is that children in the custody of the Department of Human Services should have stable placements.

(b)(1) To reduce the number of placements of children in foster care, if a foster parent requests a foster child be removed from his or her home at any time, excluding an emergency that places the child or a family member at risk of harm, then the foster parent shall attend a staffing that shall be arranged by the Division of Children and Family Services of the Department of Human Services within forty-eight (48) hours to discuss what services or assistance may be needed to stabilize the placement.

(2) The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the child's placement.

(3) If the placement cannot be stabilized, then the foster parent shall continue to provide for the foster child until an appropriate alternative placement is located, but this shall not be longer than five (5) business days.

(c)(1) Other changes in placement shall be made only after notification of the:

- (A) Foster child;
- (B) Foster parent or parents;
- (C) Child's attorney ad litem;
- (D) Child's birth parents; and
- (E) Court having jurisdiction over the child.

(2) The notices shall:

- (A) Be sent in writing two (2) weeks prior to the proposed change;
- (B) Specify reasons for the proposed change;
- (C) Convey to the attorney ad litem the address of the proposed new foster home or placement provider; and

(D) Convey to the child the name and telephone number of his or her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist in challenging the change.

(d)(1) Exceptions to the advance notice requirement shall be made if the child's health or welfare would be endangered by delaying a change in placement.

(2) Within twenty-four (24) hours of the change in placement the department shall:

(A) Notify the birth parent of the change;

(B) Notify the child's attorney ad litem of the change; and

(C) Provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.

(3) Within seventy-two (72) hours of the change in placement, the department shall provide written notice to the attorney ad litem for the specific reasons justifying the change of placement without advance notice.

(e)(1) If an agent, employee, or contractor of the department fails to comply with this section, then an action for violation of this section may be filed by any party to the action against the person who failed to comply with this section, with the assessment of punishment to be determined by the court.

(2) If the court finds that the agent, employee, or contractor of the department failed to comply with this section, then the court may order the department or the agent, employee, or contractor to pay all the costs of the proceedings brought under this section.

(f) All division caseworkers, supervisors, and area managers shall have at least one (1) hour of annual training on separation and placement issues, as well as on issues relating to the grief and loss children experience in foster care with multiple placements.

**History.** Acts 1999, No. 1363, § 1; 2003, No. 1054, § 1; 2005, No. 1191, § 6; 2007, No. 634, § 4.

**Amendments.** The 2005 amendment redesignated former (a)(1), (a)(2), (b) and (c) as present (a), (c), (d) and (e) and made related changes; added present (b) and (f); inserted "Other" at the beginning of

present (c)(1); substituted "placement provider" for "institution" in (c)(2)(C); substituted "attorney" for "guardian" in present (c)(2)(D); and inserted "and telephone number" and "home or placement" in present (d)(2)(C).

The 2007 amendment substituted "one (1) hour" for "six (6) hours" in (f).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Changes in Place-

ment of Foster Children, 26 U. Ark. Little Rock L. Rev. 411.

### 9-28-411. Foster children and educational issues.

(a) The Department of Human Services and the local school districts shall work together for the best interest of any child placed in the custody of the department.

(b) By the next business day after the department exercises a seventy-two-hour hold on a child or a court places custody of a child with the department, the department shall inform the child's current school regardless of whether the child remains in the current school that:

(1) The department has exercised a seventy-two-hour hold on the child; or

(2) The court has placed custody of the child with the department.

(c) By the next business day after a foster child transfers to a new placement, the department shall notify the child's current school that the foster child has transferred to a new placement.

(d) By the next business day after the department comes to reasonably believe that a foster child has experienced a traumatic event, the department may notify the child's school counselor that the department reasonably believes that the foster child has experienced a traumatic event.

(e) By the next business day after the department knows through an investigation or any ongoing protective services case that a foster child has experienced a traumatic event, the department may notify the child's school counselor of the traumatic event that the department has knowledge of through an investigation or an ongoing protective services case.

(f) When appropriate, the school counselor may share with the principal and the child's teachers any information reported to the counselor under subsection (d) or subsection (e) of this section.

(g)(1) For a child in the custody of the department, the department or its designee, who may be a foster parent, shall be the decision maker for all general educational matters for the child, subject to limitation only by the court having jurisdiction of the custody matter.

(2) For education matters under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., a foster parent may be the decision maker for a child in the custody of the department.

**History.** Acts 2005, No. 1961, § 1.

## **9-28-412. Department of Human Services — Power to obtain information.**

(a) As used in this section:

(1) "Business" means any corporation, partnership, cable television company, association, individual, or utility company that is organized privately, as a cooperative, or as a quasi-public entity, and labor or other organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(2) "Financial entity" means any bank, trust company, savings and loan association, credit union, or insurance company or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;



(3) "Information" means, without limitation, the following:

- (A) The full name of a parent, a putative father, or relative;
- (B) The social security number of a parent or a putative father;
- (C) The date of birth of a parent, a putative father, or relative;
- (D) The last known mailing address and residential address of a parent, a putative father, or relative; and
- (E) The amount of wages, salaries, earnings, or commissions earned by a parent or a putative father;

(4) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(5) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile and who claims or is alleged to be the biological father of the juvenile;

(6) "Relative" means an adult grandparent, adult aunt, or adult uncle of the child; and

(7) "State or local government agency" means a department, a board, a bureau, a commission, an office, or other agency of this state or any local unit of government of this state.

(b)(1) For the purpose of locating a parent, a putative father, or a relative and for the purpose of determining resources of a parent or a putative father, the Department of Human Services may request and receive information from the Federal Parent Locator Service, from available records in other states, territories, and the District of Columbia, from the records of all state agencies, and from businesses and financial entities.

(2) The Director of the Department of Human Services may enter into cooperative agreements with other state agencies, businesses, or financial entities to provide direct online access to data information terminals, computers, or other electronic information systems.

(3) State and local government agencies, businesses, and financial entities shall provide information, if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4) In addition, the Department of Human Services may, pursuant to an agreement with the Secretary of the United States Department of Health and Human Services, or his or her designee, request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of a parent or child. This information may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing a state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c) Any business or financial entity that has received a request from the department as provided by subsection (b) of this section shall

further cooperate with the department in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating absent parents or relatives and shall provide the requested information, or a statement that any or all of the requested information is not known or available to the business or financial entity. This shall be done within thirty (30) days of receipt of the request or the business or financial entity shall be liable for civil penalties of up to one hundred dollars (\$100) for each day after the thirty-day period in which it fails to provide the requested information.

(d) Any business or financial entity or any officer, agent, or employee of the business or financial entity participating in good faith and providing information requested under this section shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Department of Human Services.

(e) Any information obtained under the provisions of this section shall become a business record of the Department of Human Services, subject to the privacy safeguards set out in § 9-28-407.

**History.** Acts 2007, No. 605, § 1.

### **9-28-413. Smoking in the presence of foster children.**

The Department of Human Services shall not place or permit a child to remain in a foster home if the foster parent or any other member of the family or household smokes or allows an individual to smoke in the presence of a foster child unless it is in the child's best interests to be placed in or to remain in the foster home.

**History.** Acts 2007, No. 703, § 6.

### **9-28-414. Public disclosure of information on deaths and maltreatment.**

(a)(1) The Department of Human Services shall place a notice on the department's web page when a fatality or near fatality of a child is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq., within seventy-two (72) hours of receipt of a report from the Child Abuse Hotline.

(2) The notice of a reported fatality or near fatality of a child shall state the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death or incident;
- (C) Allegations or preliminary cause of death or incident;
- (D) County and placement of the child at time of incident;
- (E) Generic relationship of the alleged offender to the child;
- (F) Agency conducting the investigation;
- (G) Legal action by the department; and
- (H) Services offered or provided by the department now and in the past.

(3) The notice of a fatality of a child shall also include the name of the child.

(4) The department shall not put on the web page any:

(A) Information on siblings of the child; or

(B) Attorney-client communications.

(5) The department may elect not to place notice on the department's web page if:

(A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and

(B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

(b)(1) Upon request, the department shall release the following information to the general public when a Child Abuse Hotline report is received on a child in the custody of the department:

(A) Age, race, and gender of the child;

(B) Allegations of maltreatment;

(C) County and placement of the child at time of incident;

(D) Generic relationship of the alleged offender to the child; and

(E) Action taken by the department.

(2) The department shall not release:

(A) Information on siblings of the child; or

(B) Attorney-client communications.

(3) The department shall not release any information if:

(A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and

(B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

(c)(1) Upon request, the department shall release the following information when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(39):

(A) Age, race, and gender of the child;

(B) Date of the child's death;

(C) Preliminary cause of death;

(D) County and placement of the child at time of incident; and

(E) Action by the department.

(2) The department shall not release:

(A) Information on siblings of the child; or

(B) Attorney-client communications.

(3) The department shall not release any information if:

(A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and

(B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

**History.** Acts 2009, No. 674, § 1.



## SUBCHAPTER 5 — KINSHIP FOSTER CARE

## SECTION.

9-28-501 — 9-28-503. [Repealed.]

9-28-504. [Repealed.]

## SECTION.

9-28-505. [Repealed.]

**Effective Dates.** Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### 9-28-501 — 9-28-503. [Repealed.]

**Publisher's Notes.** This subchapter, concerning the Kinship Foster Care Program, was repealed by Acts 2009, No. 324, § 1. The subchapter was derived from the following sources:

9-28-501. Acts 1995, No. 445, § 2.

9-28-502. Acts 1995, No. 445, § 1; 2001, No. 1435, § 1.

9-28-503. Acts 1995, No. 445, § 2; 2001, No. 1435, § 2.

### 9-28-504. [Repealed.]

**Publisher's Notes.** This section, concerning case plans, was repealed by Acts

2001, No. 1435, § 3. The section was derived from Acts 1995, No. 445, § 2.

### 9-28-505. [Repealed.]

**Publisher's Notes.** This section, concerning rules and regulations, was repealed by Acts 2001, No. 1435, § 4. The

section was derived from Acts 1995, No. 445, § 2; 1997, No. 312, § 2.

## SUBCHAPTER 6 — THERAPEUTIC GROUP HOMES AND INDEPENDENT LIVING PROGRAMS

## SECTION.

9-28-601. Legislative intent.

9-28-602. Definitions.

## SECTION.

9-28-603. Establishment.

**Effective Dates.** Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and deter-

mined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to

the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall

become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

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### 9-28-601. Legislative intent.

In a significant number of cases, the health, safety, welfare, and basic emotional needs of children are not being met by remaining with their families. In certain situations, therapeutic group homes and independent living programs can provide the sense of structure, continuity, stability, and the positive role models that are necessary for a child to become a productive citizen, and these alternative living environments are far less expensive than maintaining a child in the penal system. Therefore, it is the intent of this legislation to establish independent living programs for youths in strategic areas throughout Arkansas for the purpose of intervention.

**History.** Acts 1995, No. 1113, § 1; 1997, No. 885, § 1.

### 9-28-602. Definitions.

As used in this subchapter:

(1) "Division" means the Division of Youth Services of the Department of Human Services;

(2) "Independent living programs" means residential and nonresidential services provided to youths that may include, but not be limited to:

- (A) Intensive case management;
- (B) Adult supervision;
- (C) Transportation;
- (D) Vocational and educational assistance; and
- (E) Counseling, including substance abuse counseling; and

(3) "Therapeutic group homes" means small family-like group living facilities that include supportive services to remedy social and behavioral problems of the youths served.

**History.** Acts 1995, No. 1113, § 2.

**9-28-603. Establishment.**

(a) The Division of Youth Services of the Department of Human Services will issue requests for proposals for contracts for the establishment of independent living programs.

(b) The programs shall:

(1) Provide case management, adult supervision, and treatment services for participant youths, as outlined in an individual case plan;

(2) Provide a continuum of treatment services in order to enable youths to be increasingly less dependent on public institutions and ultimately to live successfully without adult supervision;

(3) Establish a minimum of ten (10) independent living programs within Arkansas;

(4) Maintain a record of all services provided in individual client files;

(5) Gather follow-up data on all participants for a minimum of three (3) years after termination of services for evaluation purposes; and

(6) Provide an annual report to the division and the Senate Interim Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs summarizing outcome data in areas related to educational achievement, employment, and criminal justice contact of the participants and other information as requested by the division.

**History.** Acts 1995, No. 1113, § 3; 1997, No. 312 § 3; 1997, No. 885, § 2.

**SUBCHAPTER 7 — COMMUNITY-BASED SANCTIONS****SECTION.**

9-28-701. Legislative findings.

9-28-702. Sanctions — Use and availability.

**SECTION.**

9-28-703. Sanctions — Position.

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**Cross References.** Disposition of juvenile offenders, §§ 9-27-330 and 9-27-331.

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**9-28-701. Legislative findings.**

(a) Presently circuit judges must often choose between imposing no sanction at all or committing juveniles to the Division of Youth Services of the Department of Human Services. Judges should have punitive options available as alternatives to confinement. Therefore, it is the intent of the General Assembly that a continuum of graduated sanctions be available in every judicial district in Arkansas and that the



division provide for a continuum of sanctions that may be imposed in the community in lieu of commitment to the division in every situation.

(b) Further, the General Assembly recognizes that sanctions are usually not effective unless the sanctions are coupled with treatment and intervention services that address the underlying problems of the youth and his or her family. It is for this reason the General Assembly has provided that the community-based sanctions program be implemented by the division as part of its community-based provider contracts, and that any and all funds specifically appropriated to implement this subchapter are in addition to those funds provided for other prevention intervention, therapeutic, and family services and shall be added to existing community-based contracts without further request for proposal, but must be spent exclusively to implement and support community-based sanctions.

**History.** Acts 1997, No. 710, § 1.

### **9-28-702. Sanctions — Use and availability.**

(a) The Division of Youth Services of the Department of Human Services shall ensure that each judicial district has a continuum of sanctions available through its contracts with community-based providers. The sanctions may include, but are not limited to, the following:

(1) House arrest as enforced by electronic monitoring or intensive supervision;

(2) Restitution;

(3) Community service;

(4) Short-term detention in either a staffed or physically secure facility provided by the community-based provider or other licensed subcontractor;

(5) Mandatory parental participation in either therapeutic or sanction programs enforced, if necessary, by contempt sanctions.

(b) The Director of the Division of Youth Services of the Department of Human Services shall ensure that criteria are established to ensure the maximum use of resources, in each judicial district, to make this program available to as many juveniles as possible. To the extent resources are available, a community-based sanction may be used for the following juvenile offenders and circumstances:

(1) Offenses not involving violence;

(2) Failure to comply with the terms of the aftercare plan;

(3) Contempt of court for failure to comply with any valid court order; and

(4) Revocation of probation.

(c) Nothing in this section requires the division to provide all the sanctions listed in this section, but simply to ensure that each judicial district has in place a continuum of graduated community-based sanctions and that those sanctions are available for as many juvenile offenders as possible.

(d) The division shall add to the community-based provider contracts without further request for proposals, any and all funds specifically appropriated to implement this subchapter and shall ensure that those funds are spent exclusively to implement and support community-based sanction programs.

**History.** Acts 1997, No. 710, § 2.

### **9-28-703. Sanctions — Position.**

(a) The Division of Youth Services of the Department of Human Services may impose any community-based sanction on a juvenile in its custody or who is in aftercare as a result of having been committed.

(b) The court may impose community-based sanctions as an original disposition, revocation of probation, or as a contempt sanction.

(c) The community-based provider may not independently impose the community-based sanctions.

**History.** Acts 1997, No. 710, § 3.

## **SUBCHAPTER 8 — HOUSING FOR JUVENILE OFFENDERS BETWEEN THE AGES OF EIGHTEEN AND TWENTY-ONE**

### **SECTION.**

9-28-801. Facility to house older juvenile offenders established.

### **9-28-801. Facility to house older juvenile offenders established.**

(a) The Division of Youth Services of the Department of Human Services shall establish a separate facility to house offenders between the ages of eighteen (18) and twenty-one (21) who have been committed to the division.

(b) This facility shall be in operation by July 1, 2000, and shall be contingent upon funding.

**History.** Acts 1999, No. 1272, § 1.

## **SUBCHAPTER 9 — FOSTER PARENT SUPPORT ACT**

### **SECTION.**

9-28-901. Title.

9-28-902. Findings.

### **SECTION.**

9-28-903. Foster parent support.

### **9-28-901. Title.**

This subchapter shall be known and may be cited as the “Foster Parent Support Act of 2007”.

**History.** Acts 2007, No. 725, § 1.

**9-28-902. Findings.**

(a) The General Assembly finds that foster parents providing care for children who are in the custody of the Department of Human Services play an integral, indispensable, and vital role in the state's effort to care for dependent children displaced from their homes. The General Assembly further finds that it is in the best interests of Arkansas's child welfare system to acknowledge foster parents as active and participating members of this system and to support them.

(b) When policies regarding foster care and adoptive placement are developed by the Division of Children and Family Services of the Department of Human Services and other child placement agencies, those policies shall be designed to support and aid foster parents.

**History.** Acts 2007, No. 725, § 1.

**9-28-903. Foster parent support.**

Foster parents should be supported in the following manner:

(1) Treated by the Division of Children and Family Services of the Department of Human Services and other partners in the care of abused and neglected children with consideration, dignity, respect, and trust as a primary caregiver for foster children, including respect for the family values and routines of the foster parent;

(2) Considered to be an integral member of the professional team caring for children in foster care;

(3) Confidentiality regarding personal issues as provided by law and to be free from discrimination based on religion, race, color, creed, national origin, age, marital status, or physical handicap in matters concerning licensing approval;

(4)(A) Receive training that will enhance the skills and ability to cope as foster parents.

(B) The training shall include both standardized pre-service training and continuing education at least annually and at appropriate intervals, including without limitation the following purposes:

(i) To meet mutually assessed needs of the children in foster care;

(ii) To inform foster parents of their responsibilities and opportunities as foster parents;

(iii) To assist in the understanding of and dealing with family loss and separation when a child in foster care is placed, as well as when a foster child leaves the foster parent's home;

(iv) To be informed of and have access to in a timely manner and at least annually any changes in applicable laws, guidelines, policies, and procedures that may impact the role of foster parents;

(v) To receive specific training on investigations of alleged child abuse or neglect in a foster home. The training shall include the rights of a foster parent during an investigation; and

(vi) To receive information about and have access to local and statewide support groups, including without limitation local and statewide foster parent associations;



(5) Have contact information for the appropriate staff of the child placement agency in order to receive information and assistance to access supportive services for children in the foster parent's care;

(6) Have access to services from the Division of Children and Family Services/Child Placement Agency twenty-four (24) hours a day, seven (7) days a week for assistance;

(7)(A) All information regarding the foster child that will impact the foster parent's home or family life in order to provide assurance of safety of the foster parent's family during the care of the child in foster care.

(B) Full disclosure of all medical, psychological, and behavioral issues of children in the foster parent's care;

(8)(A) To be informed prior to placement of all information regarding the child's behavior, background, health history, or other issues relative to the child that may jeopardize the health and safety of the foster family or alter the manner in which foster care should be provided.

(B) In an emergency situation, the child placement agency shall provide information as soon as it is available;

(9) Prior to placement, to review and discuss written information concerning the child and to assist in determining if the child is a proper placement for the foster family;

(10) The ability to refuse placement of a child in the foster home or to request, upon reasonable notice, the removal of a child from the foster home without fear of reprisal or any adverse effect on being assigned any future foster child or adoptive placements;

(11) Receipt of any information through the Division of Children and Family Services/Child Placement Agency regarding the number of times a child in foster care has been moved and the reasons for those moves and, upon request and within legal guidelines or as provided by statute, to receive the names and phone numbers of the previous foster parents if the previous foster parents authorize such release;

(12) The provision of a clear, written explanation of the placement agency's plan concerning the placement of a child in the foster parent's home and to receive at any time during the placement any additional or necessary information that is relevant to the case of the child, including any subsequent revisions to the case plan on a timely basis;

(13)(A) Meaningful participation in the development of the case plan for the child in foster care in his or her home.

(B) To accomplish this goal, the foster parents shall have:

(i) The opportunity to discuss the plan of the child in foster care with the case manager and the child welfare team and be provided with a written copy of the individual service and treatment plan concerning the child in foster care in the foster parent's home, as well as a reasonable notification of any changes to that plan;

(ii) The opportunity to participate in the planning of visitation with the child in foster care and his or her birth family;

(iii) The opportunity to participate in the case planning and decision-making process with the Division of Children and Family Services/Child Placement Agency regarding the child in foster care;

(iv) The opportunity to provide input concerning the plan of care for the child and to have that input considered by the Division of Children and Family Services/Child Placement Agency;

(v) The opportunity to communicate for the purpose of participating in the case planning for the child in foster care with other professionals who work with the child in foster care within the context of the professional team, including without limitation therapists, physicians, and teachers;

(vi) The opportunity to be notified of all scheduled meetings and staffings concerning the child in foster care in order to actively participate in the case planning and decision-making process regarding the child in foster care, including individual service planning meetings, administrative case reviews, multidisciplinary staffings, and individual educational planning meetings;

(vii) The opportunity to be given, in a timely and consistent manner, any information a case worker has regarding the child in foster care and the family of the child in foster care that is pertinent to the care and needs of the child in foster care and to the making of a permanency plan for the child in foster care; and

(viii) The opportunity to be given reasonable explanatory written notice of any changes in a case plan for the child in foster care, plans to terminate the placement of the child with the foster parent within fourteen (14) days, and the reasons for the change or termination in placement except in an immediate response to a child maltreatment investigation involving the foster home. The notice shall be waived only as provided for by law;

(14) The opportunity to be notified in advance by the Division of Children and Family Services or the court of any hearing or review in which the case plan or permanency of the child in foster care is an issue, including periodic reviews held by the court, permanency hearings, and motions to extend custody;

(15) The opportunity to be notified and to be heard during any court proceeding regarding the child in foster care in the foster parent's home and to be informed of decisions made by the courts or the child welfare agency concerning the child in foster care;

(16) The opportunity to be considered as a permanency option for a foster child in their home and if in the best interest of the foster child, and to receive assistance in dealing with family loss and separation when a child in foster care leaves the foster parent's home;

(17) The following considerations:

(A) Consideration when appropriate, as a preferential placement option when a child in foster care who was formerly placed with the foster parents has reentered the foster care system;

(B) Consideration for adoption when a child in foster care who has been placed in the foster home for a period of at least twelve (12)

months becomes eligible for adoption to the extent it is in the best interest of the child in foster care; and

(C) To maintain contact with the child in foster care after the child leaves the foster home, unless the child in foster care, a birth parent, the Division of Children and Family Services who retains custody of the child in foster care, or other foster or adoptive parent refuses such contact;

(18) A reasonable plan for relief from the role of foster parenting through the use of respite care services;

(19) Receipt of timely and adequate financial reimbursement according to the agreement between the foster parents and the Division of Children and Family Services/Child Placement Agency;

(20) Receipt of evaluation and feedback on his or her role as a foster parent;

(21) In the event of an alleged violation of policies, foster parents shall have the opportunity:

(A) To request and receive a fair and impartial review regarding decisions that affect approval and retention or placement of a foster child in the foster parent's home;

(B) To be provided a fair, timely, and impartial investigation of complaints concerning the operation of the foster home;

(C) To an explanation of a corrective action plan or policy violation relating to foster parents;

(D) To have child maltreatment allegations investigated in accordance with the Child Maltreatment Act, § 12-18-101 et seq., and any removal of a child in foster care shall be pursuant to the Division of Children and Family Services policies and procedures; and

(E) To request and receive a review of decisions that affect approval of the foster home; and

(22) Information on policies and procedures for reporting of misconduct by Division of Children and Family Services employees, service providers, or contractors, confidential handling of the reports, and investigation of the reports.

**History.** Acts 2007, No. 725, § 1; 2009, No. 758, § 17.

**A.C.R.C. Notes.** The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2009 amendment substituted "Child Maltreatment Act, § 12-18-101 et seq." for "Arkansas Child Maltreatment Act, § 12-12-501 et seq." in (21)(D).

**Effective Dates.** Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

## SUBCHAPTER 10 — SAFEGUARDS FOR CHILDREN IN FOSTER CARE ACT

### SECTION.

9-28-1001. Title.

9-28-1002. Findings and purpose.

### SECTION.

9-28-1003. Safeguards for children in foster care.



**9-28-1001. Title.**

This subchapter shall be known and may be cited as the “Safeguards for Children in Foster Care Act”.

**History.** Acts 2007, No. 725, § 2.

**9-28-1002. Findings and purpose.**

(a) The General Assembly acknowledges that society has a responsibility, along with foster parents and the Department of Human Services, for the well-being of children in foster care.

(b) Every child in foster care is endowed with the opportunities inherently belonging to all children.

**History.** Acts 2007, No. 725, § 2.

**9-28-1003. Safeguards for children in foster care.**

(a) Special safeguards, resources, and care should be provided to children in foster care because of the temporary or permanent separation from parents.

(b) A child in foster care in the State of Arkansas shall be entitled to the following:

- (1) To be cherished by a family of his or her own;
- (2) To be nurtured by foster parents who have been selected to meet his or her individual needs;
- (3) To be heard and involved with the decisions of his or her life;
- (4) To have complete information and direct answers to his or her questions about choices, services, and decisions;
- (5) To be informed about and have involvement when appropriate with his or her birth family and siblings;
- (6) To have reasonable access to his or her caseworker or a person in the Department of Human Services who can make decisions on his or her behalf;
- (7) To express his or her opinion and have it treated respectfully;
- (8) To request support and services that he or she needs;
- (9) To have individualized care and attention;
- (10) To have ongoing contact with significant people in his or her life, such as teachers, friends, personal support, and relatives;
- (11) To be notified of changes impacting his or her permanence, safety, stability, or well-being;
- (12) To have a stable, appropriate placement if he or she is placed in foster care;
- (13) To receive free appropriate education, training, and career guidance to prepare him or her for a useful and satisfying life;
- (14) To receive preparation for citizenship and parenthood through interaction with foster parents and other adults who are consistent role models;

(15) To have reasonable access to and be represented by an attorney ad litem in all juvenile judicial proceedings so that his or her best interests are represented;

(16) To receive quality child welfare services;

(17) To have a plan for his or her future and the support needed to accomplish it;

(18) To receive a copy of his or her case record upon exiting foster care;

(19) To be placed in the custody or foster home of relatives, if appropriate, provided the relative caregiver meets all relevant child protection standards; and

(20) To be cared for without regard to race, gender, religion, or disability.

**History.** Acts 2007, No. 725, § 2.

## CHAPTER 29

### INTERSTATE COMPACTS

#### SUBCHAPTER

1. INTERSTATE COMPACT ON JUVENILES. [REPEALED.]
2. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.
3. INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE.
4. INTERSTATE COMPACT FOR JUVENILES.

#### SUBCHAPTER 1 — INTERSTATE COMPACT ON JUVENILES

##### SECTION.

9-29-101 — 9-29-108. [Repealed.]

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**A.C.R.C. Notes.** Acts 2005, No. 1530, § 2, provided: “SUNSET CLAUSE. It is hereby found and determined by the General Assembly that if this Interstate Compact for Juveniles is not approved by the requisite number of states by January 1, 2010, then this act will become void as of that same date.”

Acts 2005, No. 1530, § 3, provided: “When the contingency in Article X (10) of Section 1 of this act is met, Title 9, Chapter 29, Subchapter 1 is repealed.”

**Publisher’s Notes.** Subchapter 4 of Title 9, Chapter 29, the Interstate Compact for Juveniles, shall become effective

upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment of the compact into law by the 35th jurisdiction. Upon that contingency being met, Subchapter 1 of Title 9, Chapter 29, is repealed.

The contingency was met as of August 26, 2008, when the 35th state adopted the Interstate Compact for Juveniles. As of September 11, 2009, five other states have adopted the compact, and legislation to adopt the compact was pending in two other states.

9-29-101 — 9-29-108. [Repealed.]

**Publisher's Notes.** Former subchapter 1, concerning the Interstate Compact for Juveniles, was repealed on August 26, 2008, when the contingency in Acts 2005, No. 1530, §§ 3 and 4, was met. The subchapter was derived from the following sources:

- 9-29-101. Acts 1957, No. 155, § 1; A.S.A. 1947, § 45-301.
- 9-29-102. Acts 1957, No. 155, § 2; A.S.A. 1947, § 45-302.
- 9-29-103. Acts 1957, No. 155, § 3; A.S.A. 1947, § 45-303.

- 9-29-104. Acts 1957, No. 155, § 4; A.S.A. 1947, § 45-304.
- 9-29-105. Acts 1957, No. 155, § 5; A.S.A. 1947, § 45-305.
- 9-29-106. Acts 1957, No. 155, § 6; A.S.A. 1947, § 45-306.
- 9-29-107. Acts 1957, No. 155, § 7; A.S.A. 1947, § 45-307.
- 9-29-108. Acts 1987, No. 469, § 1; 1987, No. 585, § 1.

RESEARCH REFERENCES

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

SUBCHAPTER 2 — INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

SECTION.

- 9-29-201. Text of Compact.
- 9-29-202. Role of Governor — Appointment of compact administrator.
- 9-29-203. Enforcement.
- 9-29-204. Director of the Department of Human Services to determine when to discharge child.

SECTION.

- 9-29-205. Agreements with other states pursuant to the compact.
- 9-29-206. Agreements concerning visitation or supervision.
- 9-29-207. Courts authorized to place children in other states pursuant to this compact.
- 9-29-208. Financial responsibility for placed children.

**Cross References.** Adoption in general, § 9-9-101 et seq.  
Revised Uniform Adoption Act, § 9-9-201 et seq.

**Effective Dates.** Acts 1979, No. 677, § 9: July 1, 1979.

CASE NOTES

**Applicability.**  
Subsection (a) of Article III of this compact makes it clear that it is meant to deal with children who are sent from a sending state into a receiving state for placement in foster care or as a preliminary to a possible adoption; it is not applicable to

children in temporary custody of the state while custody between competing parents is determined. *Nance v. Arkansas Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994), rehearing denied, 316 Ark. 52A, 873 S.W.2d 812 (1994).



**9-29-201. Text of Compact.**

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

**INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN****ARTICLE I****Purpose and Policy**

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangement for the care of children will be promoted.

**ARTICLE II****Definitions**

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(c) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons;

(d) "Placement" means:

(1) The arrangement for the care of a child in a family, free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility; and

(2) The arrangement for the care of a child in the home of his or her parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the compact.

(e)(1) "Foster care" means the care of a child on a twenty-four-hour-a-day basis away from the home of the child's parent or parents. The care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity.

(2) In addition, if twenty-four-hour-a-day care is provided by the child's parents by reason of a court ordered placement and not by virtue of the parent-child relationship, the care is foster care.

(f)(1) "Priority placement" means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from one (1) state into another state is necessary because:

(A) The child is under two (2) years of age;

(B) The child is in an emergency shelter; or

(C) The court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(2) The state agency has thirty (30) days to complete a request for a priority placement.

(3) Requests for placement shall not be expedited or given priority except as outlined in this subsection.

(g) "Home study" means a written report that is obtained after an investigation of a household and that may include a criminal background check, including a fingerprint-based criminal background check in the national crime information database and a local criminal background check on any person in the household sixteen (16) years of age and older.

## ARTICLE III

### Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child;

(2) The identity and address or addresses of the parents or legal guardian;

(3) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(e) (1) If the home study is denied, the sending state agency shall present the home study to the juvenile division judge in the sending state.

(2) The sending state juvenile division judge shall review the home study and make specific written findings of fact regarding the concerns outlined in the home study.

(3) If the sending state juvenile division court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement.

## ARTICLE IV

### Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

## ARTICLE V

### Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have



had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one (1) or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

## ARTICLE VI

### Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

## ARTICLE VII

### Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

## ARTICLE VIII

## Limitations

This compact shall not apply to:

(a)(1) Except as provided under subdivision (a)(2) of this section, the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(2) If the guardianship is established as a prelude to a non-relative adoption or to avoid compliance with this compact, the guardian shall comply with this compact.

(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

## ARTICLE IX

## Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

## ARTICLE X

## Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the

remaining states and in full force and effect as to the state affected as to all severable matters.

**History.** Acts 1979, No. 677, § 1; A.S.A. 1947, § 83-1201; Acts 2003, No. 1809, § 15; 2007, No. 372, § 1.

**Amendments.** The 2007 amendment added (g) in Article II; in Article VIII,

inserted the present (a)(1) designation, added “Except as provided under subdivision (a)(2) of this section, the” and made a minor stylistic change in (a)(1), and added (a)(2).

## RESEARCH REFERENCES

**Ark. L. Rev.** Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

## CASE NOTES

### Applicability.

Article III of this compact made it clear that it was meant to deal with children who were sent from a sending state into a receiving state for placement in foster care or as a preliminary to a possible adoption. Arkansas Dep’t of Human Servs. v. Huff, 347 Ark. 553, 65 S.W.3d 880 (2002).

Statute, when read as a whole, was intended only to govern placing children in substitute arrangements for parental care, such as foster care or adoption; it did not apply when a child was returned by the sending state to a natural parent residing in another state. Arkansas Dep’t

of Human Servs. v. Huff, 347 Ark. 553, 65 S.W.3d 880 (2002).

In a case involving the custody of an Oklahoma child after his mother left him unattended in a car in Arkansas, written authorization from an Oklahoma agency was not required under Article III of this compact prior to placement with the paternal grandparents in Oklahoma because the case did not involve foster care or adoption; moreover, it did not involve the interstate placement of the child since the child had been in the custody of the grandparents prior to the incident. Arkansas HHS v. Jones, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

## 9-29-202. Role of Governor — Appointment of compact administrator.

As used in Article VII of the Interstate Compact on the Placement of Children, the term “executive head” means the Governor. The Governor is authorized to appoint a compact administrator in accordance with the terms of Article VII.

**History.** Acts 1979, No. 677, § 8; A.S.A. 1947, § 83-1208.

## 9-29-203. Enforcement.

(a) The “appropriate public authorities” as used in Article III of the Interstate Compact on the Placement of Children, with reference to this state, means the Department of Human Services which shall receive and act with reference to notices required by Article III.

(b) The department shall take appropriate action in the appropriate court as may be necessary to enforce the provisions of this compact and to ensure that the placement of any child shall be for the best interest of that child.



**History.** Acts 1979, No. 677, § 3; A.S.A. 1947, § 83-1203.

**9-29-204. Director of the Department of Human Services to determine when to discharge child.**

As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state means the Director of the Department of Human Services.

**History.** Acts 1979, No. 677, § 4; A.S.A. 1947, § 83-1204.

**9-29-205. Agreements with other states pursuant to the compact.**

The officers and agencies of this state and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision, or agency thereof shall not be binding unless it has the approval in writing of the Director of the Department of Human Services in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

**History.** Acts 1979, No. 677, § 5; A.S.A. 1947, § 83-1205.

**9-29-206. Agreements concerning visitation or supervision.**

Any requirements for visitation, inspection or supervision of children, homes, institutions, or other agencies in another party state which may apply under this subchapter or as required by any court of record of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

**History.** Acts 1979, No. 677, § 6; A.S.A. 1947, § 83-1206.

**9-29-207. Courts authorized to place children in other states pursuant to this compact.**

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

**History.** Acts 1979, No. 677, § 7; A.S.A. 1947, § 83-1207.

### **9-29-208. Financial responsibility for placed children.**

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Arkansas laws fixing responsibility for the support of children may also be invoked.

**History.** Acts 1979, No. 677, § 2; A.S.A. 1947, § 83-1202.

## **SUBCHAPTER 3 — INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE**

### **SECTION.**

9-29-301. Interstate Compact on Adop-

tion and Medical Assistance.

### **9-29-301. Interstate Compact on Adoption and Medical Assistance.**

## **SECTION 1**

It is the purpose and policy of the party states to cooperate with each other to assure that adoptive children for whom federally funded medical adoption assistance is desirable and necessary shall continue to receive such adoption assistance, including medical and other necessary services, when the adoptive parents move to other states or are residents of another state.

## **SECTION 2**

### **Definitions**

As used in this compact, unless the context clearly requires a different construction:

(a) "Child with special needs" means a minor who has not yet attained the age of eighteen (18) years where the State of Arkansas has determined that the child's mental or physical handicaps warrant the continuation of assistance pursuant to Title IV-E of the Social Security Act, for whom the following has been determined:

(1) That the child cannot or should not be returned to the home of his parents;

(2) That the child is a member of a minority or sibling group or other specific factors exist such as ethnic background, age, medical condition, or physical, mental, or emotional handicap because of which it is reasonable to conclude that such a child cannot be placed with adoptive parents without providing adoption assistance;

(3) That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful effort to place the child with appropriate adoptive parents without providing adoption assistance payments.

(b) "Adoption assistance" means the payment or payments are made for maintenance of a child, which payment or payments are made or committed to be made pursuant to the Adoption Assistance Program established by the laws of the party state.

(c) "State" means a state in the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, or territory or possession of the United States.

(d) "Adoptions assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(e) "Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

(f) "Parents" means either the singular or plural of the word "parent".

## SECTION 4

### Medical Assistance

(a) Children for whom a party state is committed in accordance with the terms of an adoption assistance agreement to make adoption assistance payments are eligible for medical assistance during the entire period for which such payments are to be provided, or until the child reaches the age of eighteen (18) years, whichever comes first. Upon application therefor, the adoptive parents of a child on whose behalf a party state's duly constituted authorities have entered into an adoption assistance agreement, the adoptive parents shall receive a medical assistance identification made out in the child's name. The identification shall be issued by the medical assistance program of the resident state and shall entitle the child to the same benefits, pursuant to the same procedures, as any other child who is a resident of the state and covered by medical assistance, whether or not the adoptive parents are eligible for medical assistance.

(b) The identification shall bear no indication that an adoption assistance agreement with another state is the basis for issuance. However, if the identification is issued on account of an outstanding adoption assistance agreement to which another state is a signatory, the records of the issuing state and the adoption assistance state shall show the fact, shall contain a copy of the adoption assistance agreement and any amendment or replacement therefor, and all other pertinent information. The adoption assistance and medical assistance program of the adoption assistance state shall be notified of the identification issuance.



(c) A state which has issued a medical assistance identification pursuant to this compact, which identification is valid and currently in force, shall accept, process, and pay medical assistance claims thereon as on any other medical assistance to which its residents may be eligible or entitled.

(d) An adoption assistance state which provides medical services or benefits to children covered by its adoption assistance agreements, which services or benefits are not provided for those children under the medical assistance program of the residence state, may enter into cooperative arrangements with the residence state to facilitate the delivery and administration of such services and benefits. However, any such arrangements shall not be inconsistent with this compact nor shall they relieve the residence state of any obligation to provide medical assistance in accordance with its laws and this compact.

(e) A child whose residence is changed from one (1) party state to another party state shall be eligible for medical assistance under the medical assistance program of the new state medical assistance.

## SECTION 5

Withdrawal from this compact shall be by written notice sent by the authority which executed it to the appropriate officials of all other party states, but no such notice shall take effect until one (1) year after it is given in accordance with the requirements of this paragraph. In the event any state withdraws from this compact, all adoption assistance agreements outstanding and to which a party state is signatory shall continue to have the effects given to them pursuant to this compact, until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreement involved shall continue to have all rights and obligations conferred or imposed by this compact and the withdrawing state shall continue to administer the compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

## SECTION 6

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, persons, or circumstances held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

## SECTION 7

All laws and parts of laws in conflict herewith are hereby repealed.

**History.** Acts 1985, No. 928, §§ 1, 2, 4-7; A.S.A. 1947, §§ 56-301 — 56-305.

**Publisher's Notes.** Acts 1985, No. 928 did not contain a Section 3.

**U.S. Code.** Title IV-E of the Social Security Act, referred to in this compact, is codified as 42 U.S.C. § 670 et seq.

## RESEARCH REFERENCES

**Ark. L. Rev.** Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

## SUBCHAPTER 4 — INTERSTATE COMPACT FOR JUVENILES

SECTION.

9-29-401. Text of Compact.

**A.C.R.C. Notes.** Acts 2005, No. 1530, § 2, provided: "SUNSET CLAUSE. It is hereby found and determined by the General Assembly that if this Interstate Compact for Juveniles is not approved by the requisite number of states by January 1, 2010, then this act will become void as of that same date."

**Effective Dates.** Acts 2005, No. 1530, § 4: Apr. 5, 2005. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the children of the State of Arkansas that a compact is in place to ensure the smooth transition of their transportation among the states; that the effectiveness of this act is immediate for the health and safety of the children of the State of Arkansas; and that in the event of an extension of the legislative session beginning in January 2005, the delay in the effective date of this act could do irreparable harm to the children of this state, as

well as interfere with the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this bill being necessary for the best interest of the children of the State of Arkansas and other reasons shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

**Publisher's Notes.** The contingency was met as of August 26, 2008, when the 35th state adopted the Interstate Compact for Juveniles. As of September 11, 2009, five other states have adopted the compact, and legislation to adopt the compact was pending in two other states.

## 9-29-401. Text of Compact.

The Interstate Compact for Juveniles is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form substantially as follows:

## THE INTERSTATE COMPACT FOR JUVENILES

## ARTICLE I

## Purpose

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct non-compliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of



the compact with the Interstate Compact on the Placement of Children, the Interstate Commission for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

## ARTICLE II

### Definitions

As used in this compact, unless the context clearly requires a different construction:

A. "By-laws" means: those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. "Compact Administrator" means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. "Compacting State" means: any state which has enacted the enabling legislation for this compact.

D. "Commissioner" means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. "Court" means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. "Deputy Compact Administrator" means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. "Interstate Commission" means: the Interstate Commission for Juveniles created by Article III of this compact.

H. "Juvenile" means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. “Non-Compacting state” means: any state which has not enacted the enabling legislation for this compact.

J. “Probation or Parole” means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. “Rule” means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. “State” means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

### ARTICLE III

#### Interstate Commission for Juveniles

A. The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Commission for Adult Offender Supervi-



sion, Interstate Compact on the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:



1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing any person of a crime, or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes;

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

## ARTICLE IV

### Powers and Duties of the Interstate Commission

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and by-laws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the by-laws.

## ARTICLE V

## Organization and Operation of the Interstate Commission

## Section A. By-laws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- a. Establishing the fiscal year of the Interstate Commission;
- b. Establishing an executive committee and such other committees as may be necessary;
- c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
- d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
- e. Establishing the titles and responsibilities of the officers of the Interstate Commission;
- f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;
- g. Providing "start-up" rules for initial administration of the compact; and
- h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

## Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.



### Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## ARTICLE VI

### Rulemaking Functions of the Interstate Commission

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedure Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;
2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;
3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedure Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

## ARTICLE VII

## Oversight, Enforcement and Dispute Resolution by the Interstate Commission

## Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

## Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

## ARTICLE VIII

## Finance

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate



annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

## ARTICLE IX

### The State Council

A. An Arkansas State Council for Interstate Juvenile Supervision is created. The state council shall consist of the following members:

1. One (1) nonelected representative of the legislative branch of government appointed by the Chair of the Senate Interim Committee on Children and Youth;

2. One (1) circuit court judge who, pursuant to Administrative Order No. 14, is assigned to hear cases filed pursuant to the Arkansas Juvenile Code, appointed by the Governor;

3. The Director of the Division of Youth Services of the Department of Human Services or his or her designee;

4. One (1) representative from a victim's group, appointed by the Governor;

5. One (1) juvenile probation officer, appointed by the Governor; and

6. The Director of the Division of Youth Services or his or her designee shall be the commissioner representing Arkansas on the Interstate Commission for Juveniles.

B. The Director of the Division of Youth Services or his or her designee shall be the compact administrator for Arkansas.

C. The state council shall provide advice, recommendations and advocacy concerning Arkansas' participation in interstate commission activities and the development of policies concerning operations and procedures of the compact within this state.

## ARTICLE X

## Compacting States, Effective Date and Amendment

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

## ARTICLE XI

## Withdrawal, Default, Termination and Judicial Enforcement

## Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

## Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its

obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

#### Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the



federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary, no monetary award is authorized by this compact because of the immunity granted to the State of Arkansas by the Constitution of the United States and the Constitution of the State of Arkansas.

#### Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

### ARTICLE XII

#### Severability and Construction

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact, including the provisions of Article XI, Sections A, B, and C, shall be construed to waive the sovereign immunity of the State of Arkansas granted under the Constitution of the United States and the Constitution of the State of Arkansas.

### ARTICLE XIII

#### Binding Effect of Compact and Other Laws

##### Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

##### Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

**History.** Acts 2005, No. 1530, § 1.  
**Cross References.** Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

CHAPTER 30

CHILD ABUSE AND NEGLECT PREVENTION ACT

SECTION.	SECTION.
9-30-101. Title.	9-30-105. Powers and duties of board.
9-30-102. Purpose.	9-30-106. Receipt of money.
9-30-103. Definitions.	9-30-107. Disbursement of funds.
9-30-104. State Child Abuse and Neglect Prevention Board.	9-30-108. Criteria for grants or loans.
	9-30-109. Children's Trust Fund.

**Effective Dates.** Acts 1989, No. 353, § 3: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the State Child Abuse and Neglect Prevention Board is currently required by law to deposit federal grant money into the Children's Trust Fund and that these federal funds do not need to be accumulated in the Fund as are other State funds. Therefore, in order to permit the Board to more fully utilize the federal funds, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1989."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the Gen-

eral Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

**A.L.R.** Social worker malpractice. 58 A.L.R.4th 977.

**Am. Jur.** 42 Am. Jur. 2d, Infants, §§ 16-25.

59 Am. Jur. 2d, Par. & Child, §§ 22, 35.

**C.J.S.** 43 C.J.S., Infants, §§ 9, 94.

67A C.J.S., Parent and Child, § 165 et seq.

9-30-101. Title.

This chapter shall be known and may be cited as the “Child Abuse and Neglect Prevention Act”.

**History.** Acts 1987, No. 397, § 1.

9-30-102. Purpose.

It is the purpose of this chapter to encourage the direct provision of services to prevent:

- (1) Child abuse and neglect; and
- (2) Children of prisoners from becoming future prisoners.

**History.** Acts 1987, No. 397, § 2; 2003, No. 1224, § 1.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Ne-

glect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

9-30-103. Definitions.

As used in this chapter:

- (1) “Board” means the State Child Abuse and Neglect Prevention Board created by this chapter;
- (2) “Child” means a person under eighteen (18) years of age;
- (3) “Child abuse” means any nonaccidental physical injury, mental injury, sexual abuse, or sexual exploitation inflicted by those legally responsible for the care and maintenance of the child, or an injury that is at variance with the history given. The term encompasses both acts and omissions;
- (4) “Local council” means an organization formed under regulations prescribed by the board consisting of an employee of the Department of Human Services, an employee of the Department of Health, an employee of a public secondary or elementary school, an employee of the county sheriff’s office or a city police department, a citizen at large, and any other persons deemed necessary by the board including, but not limited to, representatives from other groups or entities involved with child abuse and neglect or family violence;
- (5) “Neglect” means:



(A) Failure to provide, by those legally responsible for:

(i) The care and maintenance of the child and the proper or necessary support;

(ii) Education, as required by law; or

(iii) Medical, surgical, or any other care necessary for his or her well-being; or

(B) Any maltreatment of the child. The term includes both acts and omissions. Nothing in this chapter shall be construed to mean a child is neglected or abused for the sole reason he or she is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment;

(6) "Parenting-from-prison program" means classes or services provided to incarcerated parents at any detention or correctional facility;

(7)(A) "Prevention program" means a system of direct provision of child abuse and neglect primary and secondary prevention services to a child or guardian and includes research programs related to prevention of child abuse and neglect.

(B)(i) "Primary prevention" means programs and services designed to promote the general welfare of children and families.

(ii) "Secondary prevention" means the identification of children who are in circumstances in which there is a high risk that abuse or neglect will occur and assistance is necessary and appropriate to prevent abuse or neglect from occurring; and

(8) "Program for the children of prisoners" means school or community-based services provided to:

(A) The children of individuals incarcerated in any detention or correctional facility; or

(B) The caregivers of children of individuals incarcerated in any detention or correctional facility.

**History.** Acts 1987, No. 397, § 3; 2003, No. 1224, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of neglect Prevention, 26 U. Ark. Little Rock L. Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Neglect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

## 9-30-104. State Child Abuse and Neglect Prevention Board.

(a) The State Child Abuse and Neglect Prevention Board is created as an autonomous agency.

(b)(1) The board shall be composed of nine (9) members appointed by the Governor:

(A) One (1) from each of the present four (4) congressional districts;

(B) Four (4) from the state at large; and

(C) The Director of the Division of Children and Family Services of the Department of Human Services or his or her designee.

(2) No more than three (3) members of the board shall reside in the same congressional district.

(3) As a group, the members shall demonstrate knowledge in the area of child abuse and neglect prevention and to the extent practicable shall be representative of the professional providers of child abuse and neglect prevention services, volunteers in child abuse and neglect prevention services, and providers of domestic violence programs.

(c)(1) The term of each member shall be three (3) years with the exception of the position designated for the director.

(2) A member shall not serve more than two (2) consecutive terms, whether partial or full.

(3) A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(d)(1) The Governor shall designate a chair of the board from among its members, who shall serve in that position at the pleasure of the Governor.

(2) The board may elect such other officers and committees as it considers appropriate.

(e) Board members may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The board may appoint an executive director who, subject to approval by the board, shall hire all staff required to implement this chapter.

**History.** Acts 1987, No. 397, §§ 4, 5; 1997, No. 250, § 54; 2005, No. 166, § 1.

**Publisher's Notes.** Acts 1987, No. 397, § 5, provided, in part, that, of the members first appointed, three shall serve for three years, three for two years, and three for one year, and the Governor shall designate the term which each of the mem-

bers first appointed shall serve when he makes such appointments.

**Amendments.** The 2005 amendment, substituted "four (4)" for "five (5)" in (b)(1)(B); inserted (b)(1)(C); inserted the subdivision designations in (c); and added "with the exception of the position designated for the director" in (c)(1).

### 9-30-105. Powers and duties of board.

(a) The State Child Abuse and Neglect Prevention Board shall:

(1) Meet not fewer than two (2) times annually;

(2) Establish a procedure for the annual internal evaluation of the functions, responsibilities, and performance of the board; and

(3) Promulgate regulations necessary for the implementation of this chapter.

(b) Regarding the administration of the Children's Trust Fund, the board shall:

(1) Promulgate regulations prescribing the procedure for establishing local councils;

(2) Provide for the coordination and exchange of information on the establishment and maintenance of local councils and prevention programs;

(3) Develop and publicize criteria for the distribution of Children's Trust Fund money under § 9-30-106;

(4) Monitor the expenditure of Children's Trust Fund money by persons, groups, and entities who receive Children's Trust Fund money from the board; and

(5) Provide statewide educational and public information seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect, encourage professional persons and groups to recognize and deal with problems of child abuse and neglect, make information about the problems of child abuse and neglect available to the public and organizations and agencies that deal with problems of child abuse and neglect, and encourage the development of community prevention programs.

(c) Regarding the administration of the One Percent to Prevent Fund, to the extent funding is appropriated and available, the board shall:

(1) Develop and implement parenting-from-prison programs with preference given to facilities where parenting-from-prison programs exist or where community-based services are available;

(2) Develop and implement a post-release parenting program for parents who have been recently released from a detention or correctional facility in communities that can establish a need for the services;

(3) Develop and implement a program for the children of prisoners in communities that can establish a need for the services;

(4) Develop and implement other services and programs as needed that prevent children of prisoners from becoming future prisoners;

(5) Provide training, quality assurance, and technical assistance for each of the services and programs funded under the One Percent to Prevent Fund;

(6) Provide for the evaluation by an independent source of all services and programs funded by the One Percent to Prevent Fund; and

(7) On or before October 1 of each year, provide an annual report to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs summarizing the evaluations of the One Percent to Prevent Fund.

(d) The board may enter into contracts with any person, group of persons, or legal entity to fulfill the requirements of this section.

(e) All books, records, and documents pertaining to the board or the performance of any official function of the board shall be public records and open to the public at all reasonable times.

**History.** Acts 1987, No. 397, §§ 5, 7; 2003, No. 1224, § 2.      tees of the General Assembly as aids in the legislative process, § 10-3-203.

**Cross References.** Interim commit-



**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Neglect Prevention, 26 U. Ark. Little Rock L. Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Neglect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

**9-30-106. Receipt of money.**

(a)(1) The State Child Abuse and Neglect Prevention Board shall be the sole entity authorized to receive money from the federal government, other governments, persons, or any other entities for the Children's Trust Fund and the One Percent to Prevent Fund.

(2) The moneys received for the Children's Trust Fund and the One Percent to Prevent Fund are separate and shall be used only for the purposes provided in this chapter.

(b)(1) Regarding the Children's Trust Fund, the board shall not accept money or other assistance from the federal government or any other entity or person if the acceptance would obligate the State of Arkansas, except to the extent money is available in the Children's Trust Fund subject to the expenditure limitations prescribed by this chapter for the Children's Trust Fund; and

(2) All money except money from the federal government received in the manner described in this section shall be transmitted to the Treasurer of State for deposit into the Children's Trust Fund.

(c) Regarding the One Percent to Prevent Fund, the board shall not accept money or other assistance from the federal government or any other entity or person if the acceptance would obligate the State of Arkansas, except to the extent money is available in the One Percent to Prevent Fund.

**History.** Acts 1987, No. 397, § 8; 1989, No. 353, § 1; 2003, No. 1224, § 2.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Neglect Prevention, 26 U. Ark. Little Rock L. Legislation, 2003 Arkansas General Assembly, Election Law, Child Abuse and Neglect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

**9-30-107. Disbursement of funds.**

(a) The State Child Abuse and Neglect Prevention Board may disburse money appropriated from the Children's Trust Fund exclusively for the following purposes:

(1) To make grants or loans to any person, group of persons, or legal entity for the development or operation of a prevention program if at least all of the following conditions are met:

(A) The appropriate local council has reviewed and approved the program;

(B) The organization demonstrates an ability to match through money or in-kind services at least twenty-five percent (25%) of the amount of any Children's Trust Fund money to be disbursed to it;

(C) The organization demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance; and

(D) Other conditions that the board may deem appropriate; and  
(2) The operating expenses of the board.

(b) Disbursement of Children's Trust Fund money under subsection (a) of this section shall be kept at a minimum in furtherance of the primary purpose of the Children's Trust Fund which is to disburse money under subdivisions (a)(1) and (2) of this section to encourage the direct provision of services to prevent child abuse and neglect.

(c)(1)(A) Except as provided in subdivision (c)(2) of this section, the board may disburse money appropriated from the One Percent to Prevent Fund exclusively to make grants to any person, group of persons, or legal entity for the development, implementation, operation, or improvement of a parenting-from-prison program, a program for the children of prisoners, or a post-release parenting program as provided in § 9-30-105(c)(2).

(B) To make a grant under subdivision (c)(1)(A) of this section, the following requirements must be met:

(i) The board or its designee reviews and approves the program;

(ii) The person or entity applying for the grant demonstrates the academic background and evaluative experience necessary to provide program models and consultation on any of the programs under § 9-30-105(c); and

(iii) Other conditions that the board may deem appropriate.

(2) The board may disburse money appropriated from the One Percent to Prevent Fund for the operating expenses of the board.

**History.** Acts 1987, No. 397, § 9; 2003, No. 1224, § 2.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Neglect Prevention, 26 U. Ark. Little Rock Legislation, 2003 Arkansas General Assembly, Election Law, Child Abuse and L. Rev. 418.

### 9-30-108. Criteria for grants or loans.

Regarding the Children's Trust Fund, in making grants or loans to a local council, the State Child Abuse and Neglect Prevention Board shall consider the degree to which the local council meets the following criteria:

(1) Has as its primary purpose the development and facilitation of a community prevention program in a specific geographical area. The

prevention programs shall utilize trained volunteers and existing community resources wherever practicable;

(2) Does not provide direct services except on a demonstration project basis, or as a facilitator of interagency projects;

(3) Demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance.

**History.** Acts 1987, No. 397, § 10;  
2003, No. 1224, § 2.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Neglect Prevention, 26 U. Ark. Little Rock L. Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Neglect Rev. 418.

### 9-30-109. Children's Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special trust fund to be known as the "Children's Trust Fund".

(b) All county clerks in this state shall charge a fee of ten dollars (\$10.00) in addition to all other fees prescribed by law for each marriage license issued, and the clerks shall transmit the ten-dollar fee to the Treasurer of State who shall deposit it into the trust as special revenues.

(c)(1) Until the balance of the trust fund reaches ten million dollars (\$10,000,000), not more than eighty percent (80%) of the money credited to the trust fund during any fiscal year shall be disbursed during that fiscal year.

(2) When the balance in the trust fund reaches ten million dollars (\$10,000,000), disbursements from the trust fund shall be limited to the amount in excess of ten million dollars (\$10,000,000).

(d) The Treasurer of State shall credit to the trust fund all moneys earned on the trust fund balance.

(e) No more than twenty percent (20%) of the revenues derived from the marriage license fees during any fiscal year shall be used to cover the administrative costs of the trust fund and the operation of the State Child Abuse and Neglect Prevention Board.

(f) The twenty-percent limitation does not apply to capital expenditures.

**History.** Acts 1987, No. 397, § 6; 1991, No. 694, § 1; 1993, No. 174, § 1; 2003, No. 1224, § 2.

**A.C.R.C. Notes.** Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as

the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

**Cross References.** Children's Trust Fund, § 19-5-949.



County offices defined, § 14-14-603.  
Distribution powers of county govern-  
ments, § 14-14-502.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of      glect Prevention, 26 U. Ark. Little Rock L.  
Legislation, 2003 Arkansas General As-      Rev. 418.  
sembly, Family Law, Child Abuse and Ne-

CHAPTER 31  
YOUTH SERVICES

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. ADEPT PROGRAM.
- 3. COMMUNITY WORK, RECREATION, AND YOUTH OPPORTUNITIES ACT. [REPEALED.]
- 4. ARKANSAS YOUTH MEDIATION PROGRAM ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ADEPT PROGRAM

SECTION.

- 9-31-201. Definitions.
- 9-31-202. Objectives and duties.

**A.C.R.C. Notes.** The term “ADEPT” refers to the Assessment, Diagnosis, Evaluation, Placement, and Treatment Program of the Department of Human Services.  
As enacted, Acts 1994 (2nd Ex. Sess.), No. 23, § 2 began: “The department shall award a contract for the establishment of an ADEPT program.”  
**Effective Dates.** Acts 1994 (2nd Ex. Sess.), No. 23, § 6: Aug. 23, 1994. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkan-

sas meeting in the Second Extraordinary Session of 1994 that there is a serious shortage of treatment programs for non-adjudicated and adjudicated juveniles and their families; that additional treatment programs are needed immediately in order to curb the unprecedented growth of juvenile crime. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

9-31-201. Definitions.

As used in this subchapter:  
(1) “ADEPT” means a program that provides assessment, diagnosis, evaluation, placement, and treatment services to nonadjudicated and

adjudicated youths and their families using a multidiscipline approach and working in coordination with existing juvenile treatment programs;

(2) "Department" means the Department of Human Services; and

(3) "Director" means the Director of the Department of Human Services.

**History.** Acts 1994 (2nd Ex. Sess.), No. 23, § 1.

### **9-31-202. Objectives and duties.**

The ADEPT program shall:

(1)(A) Provide services to adjudicated and nonadjudicated juveniles on a nonresidential and a residential basis.

(B) The target population to be served by this type of program shall be defined by the Director of the Department of Human Services;

(2) Establish three (3) initial service delivery sites;

(3) Place a priority on treating youths and their families on a nonresidential basis;

(4) Maintain a record of all referrals;

(5) Provide the results of assessments, diagnoses, evaluations, and treatment and placement recommendations for all court-referred youths to the courts that referred the youths to the ADEPT program;

(6) Train local providers to conduct initial assessments for youths and their families in the program;

(7) Provide diagnoses, evaluations, and treatment and placement recommendations by using a team of M.D. and Ph.D. adolescent specialists, masters of social work, and other treatment professionals;

(8) Maintain a case file on each youth receiving ADEPT services;

(9) Develop a case plan for each youth who enters the ADEPT treatment system;

(10) Screen clients with a high risk of alcohol use for recent alcohol use and research the use of alcohol and its relation to attention deficit disorders and other diseases that adversely affect the behavior patterns of youths;

(11) Place a priority on using the least costly treatment methods and seek funding support from sources, including, but not limited to, Medicaid;

(12) Submit monthly reports to the director that include intake, closure, and follow-up data;

(13) Provide quarterly reports to the director and to the Bureau of Legislative Research; and

(14) Submit an annual report to the director and to the bureau summarizing the monthly reports and additional information, including, but not limited to, the types of problems identified, treatment services provided, and any identifiable service future needs.

**History.** Acts 1994 (2nd Ex. Sess.), No. 23, § 2.

**SUBCHAPTER 3 — COMMUNITY WORK, RECREATION, AND YOUTH OPPORTUNITIES ACT**

SECTION.  
9-31-301 — 9-31-305. [Repealed.]

**9-31-301 — 9-31-305. [Repealed.]**

**Publisher’s Notes.** Former §§ 9-31-301 — 9-31-305, concerning the Community Work, Recreation, and Youth Opportunities Commission, were repealed by Acts 1999, No. 1133, § 2. The sections were derived from the following sources:

- 9-31-301. Acts 1995, No. 1278, § 1.
- 9-31-302. Acts 1995, No. 1278, § 2.
- 9-31-303. Acts 1995, No. 1278, § 3.
- 9-31-304. Acts 1995, No. 1278, § 3; 1997, No. 250, § 55; 1997, No. 1354, § 12.
- 9-31-305. Acts 1995, No. 1278, § 4.

**SUBCHAPTER 4 — ARKANSAS YOUTH MEDIATION PROGRAM ACT**

SECTION.  
9-31-401. Title.  
9-31-402. Legislative purpose.  
9-31-403. Definitions.  
9-31-404. Powers and responsibilities of

SECTION.  
the Arkansas Youth Mediation Program.  
9-31-405. Program goals.

**Effective Dates.** Acts 1999, No. 628, § 9: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that in other states mediation programs have been successful in helping youth and people in their homes, schools, and communities to resolve conflicts cooperatively, productively, and non-violently, that a program of youth mediation training is intended to benefit children, families, professionals, and courts throughout the

State of Arkansas by preventing harmful conflicts from rising to confrontation and violence, and that the most effective time to create and implement new programs in state government is at the beginning of a new state fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

**9-31-401. Title.**

This subchapter shall be known and may be cited as the “Arkansas Youth Mediation Program Act of 1999”.

**History.** Acts 1999, No. 628, § 1.



**9-31-402. Legislative purpose.**

The General Assembly recognizes:

(1) That the youth of Arkansas are its most important natural resource and they are increasingly at risk due to conflict in their homes, schools, and communities;

(2) That mediation programs can help the youth of Arkansas and people in their homes, schools, and communities to resolve conflicts cooperatively, productively, and nonviolently and when possible prevent harmful conflicts from rising to confrontation and violence; and

(3) Therefore this subchapter is intended to benefit children, families, professionals, and courts throughout the State of Arkansas by establishing the Arkansas Youth Mediation Program to be housed at the William H. Bowen University of Arkansas at Little Rock School of Law and the University of Arkansas at Fayetteville School of Law to provide mediation services and training for:

(A) Children in schools;

(B) Youth who have committed certain delinquent acts;

(C) Children and families in need of services; and

(D) Children and families when there are allegations or findings of child abuse or neglect.

**History.** Acts 1999, No. 628, § 2.

**9-31-403. Definitions.**

As used in this subchapter:

(1) "Mediation" means a process in which a neutral person or persons help disputants try to resolve a dispute in whole or in part by reaching an agreement without the mediator or mediators imposing the agreement; and

(2) "Program" means the Arkansas Youth Mediation Program at the University of Arkansas at Little Rock School of Law and the University of Arkansas at Fayetteville School of Law.

**History.** Acts 1999, No. 628, § 3.

**9-31-404. Powers and responsibilities of the Arkansas Youth Mediation Program.**

(a)(1) There is created a program that shall be called the "Arkansas Youth Mediation Program".

(2) In the event funds are appropriated for this purpose, it shall be housed at and operated by the William H. Bowen University of Arkansas at Little Rock School of Law and the University of Arkansas at Fayetteville School of Law.

(b) The programs shall have the authority and responsibility to:

(1) Operate pilot projects offering mediation services for disputes in schools involving youth, juvenile delinquency cases, family in need of services cases, and dependency-neglect cases;

(2) Provide training and technical assistance for elementary and secondary schools to:

(A) Operate mediation programs in these schools for disputes involving children; and

(B) Incorporate conflict resolution education into the curriculum;

(3) Provide training and technical assistance for circuit courts to mediate juvenile delinquency and family in need of services cases as the courts deem appropriate;

(4) Provide training and technical assistance for circuit courts to mediate dependency-neglect cases as the courts deem appropriate;

(5) Offer law school courses and continuing education programs for lawyers and other professionals throughout Arkansas;

(6) Hire personnel and expend funds as necessary and appropriate to carry out the program's goals;

(7) Apply for and accept gifts or grants from any public or private source for use in maintaining and improving the operation of the program; and

(8) Take other appropriate actions to carry out the program's goals.

**History.** Acts 1999, No. 628, § 4.

### **9-31-405. Program goals.**

The Arkansas Youth Mediation Program's goals are to:

(1) Reduce economic, psychological, and social costs to individuals and public and private institutions arising from disputes involving youth;

(2) Reduce court dockets and delays;

(3) Increase the ability of youth to resolve conflicts cooperatively, productively, and nonviolently;

(4) Reduce antisocial behavior by children, parents, and other relatives;

(5) Increase the ability of elementary and secondary schools to concentrate their efforts on education by decreasing distractions due to conflicts in school;

(6) Encourage youth offenders to understand the consequences of their actions and take responsibility for those actions by providing suitable restitution to victims of their offense or other rehabilitative dispositions, or both;

(7) Provide victims of juvenile crime an opportunity to constructively confront offenders to explain the impact of the offense and develop suitable restitution plans or other rehabilitative dispositions;

(8) Expedite the safe and permanent placement of children removed from their homes due to allegations or findings of being dependent-neglected by improving the operation of the Department of Human Services in developing and implementing appropriate case plans in cooperation with affected family members and other interested individuals and agencies;

(9) Train lawyers and law students in techniques for satisfying a client's interests through negotiation and mediation and reducing unnecessary adversarial behavior and expense in litigation throughout Arkansas; and

(10) Assist public and private institutions in Arkansas to incorporate mediation programs into their institutions by providing training and technical assistance.

**History.** Acts 1999, No. 628, § 5.

## CHAPTER 32

### CHILD WELFARE

#### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS CHILD WELFARE PUBLIC ACCOUNTABILITY ACT.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

#### SUBCHAPTER 2 — ARKANSAS CHILD WELFARE PUBLIC ACCOUNTABILITY ACT

##### SECTION.

- 9-32-201. Short title.  
9-32-202. Legislative findings.  
9-32-203. Quarterly performance reports.  
9-32-204. Annual performance reports —  
Arkansas Child Welfare  
Report Card.

##### SECTION.

- 9-32-205. Annual performance audits.  
9-32-206. Provision of information and  
assistance.  
9-32-207. Annual report to General As-  
sembly.

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**Effective Dates.** Acts 1995, No. 1222, § 11: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the child welfare program is vitally important to this State; that oversight by the General Assembly is imperative; that this act establishes the oversight mechanism; and that this act should go into effect immediately in order to implement the child welfare program oversight as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint In-

terim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."



**9-32-201. Short title.**

This subchapter shall be known as and may be cited as the “Arkansas Child Welfare Public Accountability Act”.

**History.** Acts 1995, No. 1222, § 1.

**9-32-202. Legislative findings.**

To enhance the public’s access to child welfare program performance indicators, to raise the public’s awareness of the child welfare program’s client outcomes, to enable the General Assembly to monitor and assess the performance of the Division of Children and Family Services of the Department of Human Services, Division of Mental Health Services of the Department of Human Services, and Division of Youth Services of the Department of Human Services, and to specifically monitor the compliance of the Division of Children and Family Services with court-ordered settlement agreements and compliance with state and federal regulations, the General Assembly finds that special and extraordinary provisions for legislative oversight of the child welfare system should be established.

**History.** Acts 1995, No. 1222, § 2; Against Children Division of the Department of Arkansas State Police, § 12-8-2001, No. 1727, § 1.

**Cross References.** Provision of information and assistance by the Crimes 508.

**9-32-203. Quarterly performance reports.**

(a)(1) The Division of Youth Services of the Department of Human Services, the Division of Behavioral Health of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services are hereby directed to issue to the Senate Interim Committee on Children and Youth a quarterly report on the performance of the child welfare system.

(2) These quarterly reports will be known as the “Division of Youth Services Quarterly Performance Report”, the “Division of Behavioral Health Quarterly Performance Report”, and the “Division of Children and Family Services Quarterly Performance Report” and shall be transmitted to the Senate Interim Committee on Children and Youth no later than sixty (60) calendar days after the end of each calendar quarter.

(b) The Division of Youth Services Quarterly Performance Report, the Division of Behavioral Health Quarterly Performance Report, and the Division of Children and Family Services Quarterly Performance Report shall contain, but not be limited to:

- (1) Client outcome information;
- (2) Case status information;
- (3) Compliance information;
- (4) Management indicators; and

(5) Other data agreed to by the Senate Interim Committee on Children and Youth, the Division of Behavioral Health, the Division of Children and Family Services, and the Division of Youth Services.

(c) The Division of Behavioral Health shall report information by mental health catchment areas with actual totals.

(d)(1) The Division of Children and Family Services shall report on the number of children in foster care who experienced two (2) or more placements in care and the number of children in foster care who have run away at the end of each quarter.

(2) The data shall include, but not be limited to, the number of placements, the race and age of the children experiencing multiple moves, and runaway status.

(3) This data shall be reported by regional areas in the annual report.

(e)(1) The Division of Children and Family Services shall report on the fatality or near fatality of a child that is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The data on a reported fatality or near fatality shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death or incident;
- (C) Allegations or preliminary cause of death or incident;
- (D) County and placement of the child at time of incident;
- (E) Generic relationship of the alleged offender to child;
- (F) Agency conducting the investigation;
- (G) Legal action by the department; and
- (H) Services offered or provided by the department now and in the past.

(3) The data of a fatality shall also include the name of the child.

(f)(1) The Department of Human Services shall report Child Abuse Hotline reports received on a child in the custody of the department.

(2) The data on reports of maltreatment on foster children shall include the:

- (A) Age, race, and gender of the child;
- (B) Allegations of maltreatment;
- (C) County and placement of the child at time of incident;
- (D) Generic relationship of the alleged offender to the child; and
- (E) Action taken by the department.

(g)(1) The department shall report when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(39).

(2) The data on the deaths of children in an out-of-home placement shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death;
- (C) Preliminary cause of death;
- (D) County and placement of the child at time of incident; and
- (F) Action by the department.

(h) The department shall report any noncase-specific recommendations of the department's Child Death Review Committee.

**History.** Acts 1995, No. 1222, § 3; 1997, No. 312, § 4; 2001, No. 1727, § 2; 2003, No. 178, § 1; 2003, No. 1809, § 16; 2009, No. 674, § 2.

**A.C.R.C. Notes.** As enacted, subdivision (a)(2) also provided: "The first quarterly report is due October 30, 1995."

As enacted, this section contained a subsection (c), which provided: "(c) Prior to July 1, 1995, the Division of Youth Services and the Division of Children and

Family Services shall submit its recommended format and content for the report to the Joint Committee on Children and Youth for its review and comment."

**Amendments.** The 2009 amendment added (e) through (h).

**Cross References.** Provision of information and assistance by the Crimes Against Children Division of the Department of Arkansas State Police, § 12-8-508.

### **9-32-204. Annual performance reports — Arkansas Child Welfare Report Card.**

(a)(1)(A) The Division of Youth Services of the Department of Human Services, the Division of Behavioral Health of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services shall issue an annual report on the performance of the child welfare system on a county-by-county basis.

(B) The Division of Behavioral Health will report information by mental health catchment areas with state totals.

(2) This annual report will be known as the "Arkansas Child Welfare Report Card".

(b) The Arkansas Child Welfare Report Card shall contain, but not be limited to, for each county and the state as a whole:

(1) Client outcome information;

(2) Case status information;

(3) Compliance information;

(4) Management indicators; and

(5) Other data specified by the Senate Interim Committee on Children and Youth.

(c) The Arkansas Child Welfare Report Card shall be published and transmitted to the Senate Interim Committee on Children and Youth no later than December 1 of each year, and it must be published in a format that can be easily understood by the general public.

(d)(1) The Division of Children and Family Services shall report on the fatality or near fatality of a child that is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The data on a reported fatality or near fatality shall include the:

(A) Age, race, and gender of the child;

(B) Date of the child's death or incident;

(C) Allegations or preliminary cause of death or incident;

(D) County and placement of the child at time of incident;

(E) Generic relationship of the alleged offender to the child;

(F) Agency conducting investigation;

(G) Legal action by the department; and

(H) Services offered or provided by the department now and in the past.

(3) The data of a fatality shall also include the name of the child.



(e)(1) The Department of Human Services shall report hotline reports received on a child in the custody of the department.

(2) The data on reports of maltreatment on foster children shall include the:

- (A) Age, race, and gender of the child;
- (B) Allegations of maltreatment;
- (C) County and placement of the child at time of incident;
- (D) Generic relationship of the alleged offender to the child; and
- (E) Action taken by the department.

(f)(1) The department shall report when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(39).

(2) The data on the deaths of children in an out-of-home placement shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death;
- (C) Preliminary cause of death;
- (D) County and placement of the child at time of incident; and
- (F) Action by the department.

(g) The department shall place any noncase-specific recommendations of the department's Child Death Review Committee on the department's web page.

**History.** Acts 1995, No. 1222, § 4; 1997, No. 312, § 5; 2001, No. 1727, § 3; 2009, No. 674, § 3.

**A.C.R.C. Notes.** As enacted, subdivision (a)(1) began: "Beginning December 1, 1995".

As enacted, this section also provided: "Prior to July 1, 1995, the Division of Youth Services and the the Division of Children and Family Services shall submit its recommended format and content

for the report to the Joint Committee on Children and Youth for its review and comment."

**Amendments.** The 2009 amendment added (d) through (g).

**Cross References.** Provision of information and assistance by the Crimes Against Children Division of the Department of Arkansas State Police, § 12-8-508.

### 9-32-205. Annual performance audits.

(a) The Senate Interim Committee on Children and Youth shall conduct annual performance audits of the Division of Youth Services of the Department of Human Services, the Division of Mental Health Services of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services.

(b) To establish performance auditing standards, the Senate Interim Committee on Children and Youth shall use for guidance the Standards for Audit of Governmental Organizations, Programs, Activities and Functions (revised), published by the United States General Accounting Office.

(c) The performance audits shall contain, but not be limited to, a complete assessment of the compliance of the Division of Youth Services, the Division of Mental Health Services, and the Division of Children and Family Services with state and federal regulations and

with the terms and conditions of the court-ordered settlement agreement.

(d) To conduct the performance audit, the Senate Interim Committee on Children and Youth may utilize surveys, client interviews, and other research methodology that it deems necessary.

**History.** Acts 1995, No. 1222, § 5; 1997, No. 312, § 6; 2001, No. 1727, § 4.

**A.C.R.C. Notes.** As enacted, this section contained two additional subsections, which provided: "(e) The Joint Committee on Children and Youth shall commence preparations for the performance audits immediately.

"(f) The Joint Committee on Children

and Youth shall review the performance audit procedures, methodology and design no later than July 1, 1995."

**Cross References.** Provision of information and assistance by the Crimes Against Children Division of the Department of Arkansas State Police, § 12-8-508.

### **9-32-206. Provision of information and assistance.**

(a) The Division of Youth Services of the Department of Human Services, the Division of Mental Health Services of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services shall make available to the Senate Interim Committee on Children and Youth a list of all reports the unit submits to the Director of the Department of Human Services.

(b) Under the direction of the director, the Division of Youth Services, the Division of Mental Health Services, and the Division of Children and Family Services shall work cooperatively with and provide any necessary assistance to the Senate Interim Committee on Children and Youth.

(c) Notwithstanding any agency rules or regulations to the contrary, the Division of Youth Services, the Division of Mental Health Services, and the Division of Children and Family Services shall furnish information to members of the General Assembly, legislative staff, or legislative committees immediately upon request.

**History.** Acts 1995, No. 1222, § 6; 1997, No. 312, § 7; 2001, No. 1727, § 5.

### **9-32-207. Annual report to General Assembly.**

The Senate Interim Committee on Children and Youth shall report annually to the General Assembly its findings and recommendations regarding the child welfare program.

**History.** Acts 1995, No. 1222, § 7; 1997, No. 312, § 8.

## CHAPTER 33

### YOUTH VIOLENCE

#### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. COMMON GROUND PROGRAM.
3. AFTER-SCHOOL ENRICHMENT PROGRAM.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

#### SUBCHAPTER 2 — COMMON GROUND PROGRAM

##### SECTION.

- 9-33-201. Legislative findings.
- 9-33-202. Common Ground Program Committee — Members.
- 9-33-203. Common Ground Program Committee — Officers and activities.

##### SECTION.

- 9-33-204. Common Ground Program Committee — Powers and duties.
- 9-33-205. Department of Health—Powers and duties.
- 9-33-206. Grants priority.

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**Effective Dates.** Acts 1997, No. 745, § 10: Mar. 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the work of the Common Ground Program is on-going and the committee is performing a valuable service in helping to stem youth violence and promote youth crime prevention programs in the state; that the Common Ground Program Committee's work is not yet completed and that the committee will cease to exist on March 1, 1997, unless

reestablished by law and that this act is designed to reestablish and continue the Common Ground Committee and the program and should be given effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after March 1, 1997."

The Governor signed Acts 1997, No. 745, on March 21, 1997.

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#### 9-33-201. Legislative findings.

(a) The General Assembly, in response to the recommendations from the Governor's Summit on Youth Violence Prevention in December 1994, and the regional summits held in December 1996, finds that:

(1) For too many Arkansas children, the environment in which they live prevents their healthy development, resulting in school failure, substance abuse, teen pregnancy, violence, and other destructive behaviors;

(2) Intervention or treatment programs and punishment or incarceration are far more costly than working to prevent destructive behaviors from occurring;



(3) An environment in which youths can grow up healthy, safe, succeeding in school, participating in community life, and ready to enter productive adulthood is inseparable from the well-being of families and the safety, stability, and economic viability of the neighborhoods and communities where they live;

(4) New relationships are needed between state government, local communities, public and private service agencies, and the families and young people who need services, so that help will be more accessible, easier to use, and more effective;

(5) Better evaluation tools are needed to identify youth crime and violence prevention programs that are working and those that are not, so that scarce resources can be more effectively utilized;

(6) A better communication system is needed to connect and streamline the array of services, coalitions, and committees already under way, to track programs and publicize successful models; and

(7) Solving the current problems of youth cannot be accomplished in a short-term program but will take a long-term commitment on the part of state and local government and all those who touch the lives of our youth.

(b) Therefore, the Common Ground Program, established by the 1995 General Assembly and that will cease to exist March 1, 1997, is hereby reestablished as hereinafter provided to serve as a bridge connecting and assisting government, communities, and citizens to build a more responsive human educational and economic system in which children and families can thrive.

**History.** Acts 1997, No. 745, § 1.

### **9-33-202. Common Ground Program Committee — Members.**

(a) The Common Ground Program and the Common Ground Program Committee shall work in collaboration with the Governor's Partnership Council for Children and Families in coordinating grants, programs, and services. The committee shall be composed of twenty-three (23) members to serve at the pleasure of the Governor with (20) appointed by the Governor as follows:

(1) One (1) member shall be a state Senator;

(2) One (1) member shall be a state Representative;

(3) Two (2) members shall be representatives of the Governor's Youth Commission to be selected by the Governor from a list of three (3) names per position submitted by the Governor's Youth Commission or if the Governor's Youth Commission fails to submit the names or ceases to exist, two (2) youth member representatives;

(4) Two (2) representatives of the Governor's Partnership Council for Children and Families with at least one (1) of the representatives being chosen from the council's membership at large;

(5) Fourteen (14) members shall be culturally diverse representatives of the statewide community at large, and may include parents, educators, representatives of religious organizations, health care pro-

fessionals, youth service providers, law enforcement officers, representatives of business, and those working in the juvenile justice system; and

(6) The three (3) directors of the Department of Health, the Department of Human Services, and the Department of Education, or their respective designees, shall be members of the committee.

(b) Members of the committee shall serve without compensation, but may, to the extent moneys are appropriated therefor and subject to reasonable limitations established by the Department of Finance and Administration, be reimbursed for actual reasonable expenses incurred in the performance of their official duties in accordance with rates and standards for reimbursement of state employees.

**History.** Acts 1997, No. 745, § 2.

### **9-33-203. Common Ground Program Committee — Officers and activities.**

(a) The Common Ground Program Committee shall select a chair and any other officers it deems appropriate from its membership.

(b) The committee shall exist until such time as it has completed its work or is dissolved by the General Assembly, whichever comes first.

(c) The activities of the committee shall be governed by the rules established by the committee.

**History.** Acts 1997, No. 745, § 3.

### **9-33-204. Common Ground Program Committee — Powers and duties.**

The Common Ground Program Committee shall have responsibility to:

(1) Periodically review grants using committee members or a peer review process, or both, and make recommendations as needed to the Governor's office and to the General Assembly regarding the performance of grantees;

(2) Develop criteria and priorities for a grant program to be based on the recommendations from the Governor's Youth Summit on Violence Prevention that was held in December 1994, the regional summits held in 1996-1997, and from regional summits, public hearings, and surveys thereafter;

(3) Award grants using the criteria and priorities established by the committee and report the awards to the Governor's office;

(4) Develop information about the grant program that the Governor's office, the General Assembly, and others can use to disseminate information to the general public;

(5) Report the results of the grant program annually to the Governor and the General Assembly; and

(6) Administer the Arkansas After-School Enrichment Program, including, at least, developing criteria and priorities for a grant program,

awarding grants, developing information about the Arkansas After-School Enrichment Program that the Governor's office, the General Assembly, and others can use to disseminate information to the general public, and reporting the results of the program annually to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

**History.** Acts 1997, No. 745, § 4; 1999, No. 1513, § 5.

**Cross References.** After-School Enrichment Program, § 9-33-301 et seq.

### **9-33-205. Department of Health—Powers and duties.**

(a) The Department of Health shall be the agency designated to serve as the administrative and fiscal agent for the Common Ground Program.

(b) Funds appropriated for the Common Ground Program may only be used for activities in support of the Common Ground Program that comply with the stated legislative purpose as contained in this chapter.

(c) The department shall have the following authority and responsibilities in acting as fiscal agent for the Common Ground Program:

(1) To disburse program grant funds to qualifying entities as directed by the Common Ground Program Committee;

(2) To submit applications on behalf of the committee for funds that may become available from public and private funding sources that would be used to implement the activities of the Common Ground Program; and

(3) To contract for fund-raising and fiscal investment and management services.

(d) The department shall carry out or contract for the following administrative functions for the Common Ground Program:

(1) The establishment of a Clearinghouse for Youth Crime Prevention Program in the Office of Alcohol and Drug Abuse Prevention of the Department of Human Services, that shall, in collaboration with the Division of Chronic Disease and Disability Prevention of the Department of Health:

(A) Maintain a database that tracks successful youth crime and violence prevention programs in Arkansas and other states;

(B) Develop and implement procedures for the collection of information about youth crime and violence prevention programs in conjunction with the committee; and

(C) Develop and implement procedures for the dissemination of information about youth crime and violence prevention programs in conjunction with the committee;

(2) The development and administration of an outreach and grant program component, that shall:

(A) Conduct public education activities about the Common Ground Program, the committee, and the programs developed and implemented thereunder;

(B) Assist groups in developing grant applications by providing grantees, the committee and staff, and others with the information



and skills necessary to successfully plan, develop, implement, and finance youth crime and violence prevention programs; and

(C)(i) In order to solicit the opinions and recommendations of citizens, youths, and public officials regarding strategies and programs to prevent youths from becoming influenced by and involved in youth crime and violence, conduct:

(a) Regional summits or public hearings at the discretion of the Common Ground Program; and

(b) Surveys.

(ii) Based on those opinions and recommendations, the outreach and grant program component shall submit a biennial report suggesting funding priorities to the committee for presentation to the Governor and the General Assembly;

(3) The development and administration of evaluation, assessment, and reporting components, that will evaluate grant recipients and collect information about other information about youth crime and violence prevention programs to enhance the success of the Common Ground Program;

(4) The provision of administrative support to the committee in performing its statutory duties; and

(5) The provision of peer review of the Common Ground Program grant applications.

**History.** Acts 1997, No. 745, § 5; 2001, No. 1553, § 21.

### **9-33-206. Grants priority.**

Priority for Common Ground Program grants shall be given to applicants that:

(1)(A) Provide matching funds for the youth crime prevention programs in an amount equal to at least fifty percent (50%) of the grant award.

(B) Matching funds may be in cash or in goods and services; and

(2) Demonstrate support for the youth crime and violence prevention programs from the local community, including elected officials.

**History.** Acts 1997, No. 745, § 6.

## **SUBCHAPTER 3 — AFTER-SCHOOL ENRICHMENT PROGRAM**

### **SECTION.**

9-33-301. Definitions.

9-33-302. Creation — Purpose.

### **SECTION.**

9-33-303. Administration — Funding.

9-33-304. Cooperation by other agencies.

### **9-33-301. Definitions.**

As used in this subchapter:

(1) “After-school enrichment program” means a program conducted after regular school hours to provide additional assistance for at-risk

high school students requiring tutorial or mentoring assistance with character building, communication skills, conflict resolution skills, and career or other life skills;

(2) “At-risk school district” means a school district in which a middle school, junior high school, or high school has high drop-out rates, low grade-retention rates, or high rates of suspensions, detention referrals, violent behavior, or other disruptive student behavior; and

(3) “At-risk students” means high school students who are in danger of dropping out as measured by academic performance, attendance, discipline problems, and other factors affecting school performance, including, at least, teenage pregnancy or parenting, alcohol or other illegal drugs, residence in an unstable or temporary living arrangement, child abuse or neglect, poor communication skills, character building, conflict resolution skills, and career or other life skills.

**History.** Acts 1999, No. 1513, § 1.

### **9-33-302. Creation — Purpose.**

(a) There is created the Arkansas After-School Enrichment Program.

(b) The purpose of the program is to provide grants to at-risk school districts for locally designed programs based on criteria developed through research-based prevention programs deemed effective by the Department of Education that target at-risk students in middle school, junior high school, high school, or any combination of the three (3) by:

(1) Enhancing educational attainment through coordinated services to respond to the needs of students who are at risk of school failure and at risk of failure in their lives and careers following their school years;

(2) Providing financial assistance for at-risk students to those at-risk school districts that by definition are identified to have the greatest need; and

(3) Providing for a safe and secure learning environment.

**History.** Acts 1999, No. 1513, § 2.

### **9-33-303. Administration — Funding.**

(a) The Department of Health shall be the agency designated to serve as the administrative and fiscal agent for the Arkansas After-School Enrichment Program.

(b) Funds appropriated for the Arkansas After-School Enrichment Program may only be used for activities in support of the Arkansas After-School Enrichment Program that comply with the stated legislative purpose as contained in this subchapter.

(c) The Department of Health shall have the following authority and responsibilities in acting as fiscal agent for the Arkansas After-School Enrichment Program within the Common Ground Program:

(1) To disburse the Arkansas After-School Enrichment Program grant funds to qualifying entities at a minimum of forty percent (40%)

of the allocation of Common Ground Program funds as directed by the Common Ground Program Committee;

(2) To solicit proposals from at-risk school districts with high percentages of at-risk high schools for after-school enrichment programs;

(3) To ensure that applications include evidence of a district-wide needs assessment and planning processes, program objectives and activities, anticipated results, evaluation plans, and proposed linkages with community health and human service agencies and existing school programs;

(4) To provide technical assistance to at-risk school districts, including information about effective research-based prevention programs and agency services, to provide for program review and evaluation and, in consultation with other state agencies, including the Department of Education, to develop program guidelines for coordinated service delivery and to establish standards against which programs may be judged for efficiency and effectiveness; and

(5) To submit applications on behalf of the Common Ground Program Committee for funds that may become available from public and private funding sources that would be used to implement the activities of the Arkansas After-School Enrichment Program.

**History.** Acts 1999, No. 1513, § 3.

**Cross References.** Common Ground Program, § 9-33-201 et seq.

### 9-33-304. Cooperation by other agencies.

(a) All agencies of the state and local governments, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, state-supported institutions of higher learning, the community college system, and cities and counties shall cooperate with the Common Ground Program, the Common Ground Program Committee, and with at-risk school districts that receive grants in coordinating the Arkansas After-School Enrichment Program at the state level and in implementing the program at the local level.

(b) The Department of Human Services, in consultation with the Director of the Department of Education, shall develop a plan for ensuring the cooperation of state agencies and for local agencies and encouraging the cooperation of private entities, especially those receiving state funds, in the coordination and implementation of the Arkansas After-School Enrichment Program.

**History.** Acts 1999, No. 1513, § 4; 2007, No. 827, § 125.

**Amendments.** The 2007 amendment, in (b), inserted “and Human Services” and deleted “and the Director of the Depart-

ment of Human Services” following “Department of Education.”

**Cross References.** Common Ground Program, § 9-33-201 et seq.



CHAPTER 34  
VOLUNTARY PLACEMENT OF A CHILD

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. VOLUNTARY DELIVERY OF A CHILD.

**Publisher’s Notes.** Acts 2001, No. 236,  
was entitled the Safe Haven Act.

SUBCHAPTER 1 — GENERAL PROVISIONS  
[Reserved]

SUBCHAPTER 2 — VOLUNTARY DELIVERY OF A CHILD

SECTION.

- 9-34-201. Definitions.
- 9-34-202. Delivery to medical provider or  
law enforcement agency.

SECTION.

- 9-34-203. Care of the child.
- 9-34-204. Missing Persons Information  
Clearinghouse.

**Cross References.** Endangering the  
welfare of a minor in the first degree,  
§ 5-27-205.

9-34-201. Definitions.

For purposes of this chapter:

- (1) “Law enforcement agency” means any police force or organization whose primary responsibility as established by law or ordinance is the enforcement of the criminal, traffic, or highway laws of this state as defined in § 12-9-301 and that is staffed twenty-four (24) hours a day; and
- (2) “Medical provider” means any emergency department of a hospital licensed under § 20-9-214.

**History.** Acts 2001, No. 236, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of      sembly, Family Law, 24 U. Ark. Little  
Legislation, 2001 Arkansas General As-      Rock L. Rev. 483.

## CASE NOTES

**Cited:** Burnette v. State, 354 Ark. 584, 127 S.W.3d 479 (2003).

**9-34-202. Delivery to medical provider or law enforcement agency.**

(a) Any medical provider or law enforcement agency shall without a court order take possession of a child who is thirty (30) days old or younger if the child is left with or voluntarily delivered to the medical provider or law enforcement agency by the child's parent who does not express an intent to return for the child.

(b) A medical provider or law enforcement agency that takes possession of a child under subsection (a) of this section shall perform any act necessary to protect the physical health and safety of the child.

(c) A medical provider or law enforcement agency shall incur no civil or criminal liability for any good faith acts or omissions performed pursuant to this section.

**History.** Acts 2001, No. 236, § 1.

## CASE NOTES

**Cited:** Burnette v. State, 354 Ark. 584, 127 S.W.3d 479 (2003).

**9-34-203. Care of the child.**

(a) Upon delivery of the child to a law enforcement agency or a medical provider, the law enforcement officer or an appropriate hospital employee shall take the child into protective custody for seventy-two (72) hours under the Child Maltreatment Act, § 12-18-101 et seq.

(b) The law enforcement officer or hospital employee shall immediately notify the Division of Children and Family Services of the Department of Human Services, which shall initiate a dependency petition pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

**History.** Acts 2001, No. 236, § 1; 2009, No. 758, § 18.

**A.C.R.C. Notes.** The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

**Amendments.** The 2009 amendment substituted "under the Child Maltreatment Act, § 12-18-101 et seq." for "pursuant to § 12-12-516" in (a).

**Effective Dates.** Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective."

**9-34-204. Missing Persons Information Clearinghouse.**

The Division of Children and Family Services of the Department of Human Services shall utilize the Missing Persons Information Clearinghouse and any other national and state resources to determine whether the child is a missing child.

**History.** Acts 2001, No. 236, § 1.



## TITLE 9 — APPENDIX

### ADMINISTRATIVE ORDER NUMBER 10 — CHILD SUPPORT GUIDELINES

The Per Curiam Orders of the Supreme Court of Arkansas of February 5, 1990, May 13, 1991, and October 25, 1993, established guidelines for child support enforcement. The Per Curiam Order of September 25, 1997, established Administrative Order Number 10, establishing guidelines effective October 1, 1997. Administrative Order Number 10 was republished in the Per Curiam Order of January 22, 1998, making minor corrections to the child-support charts and to the Affidavit of Financial Means. The Per Curiam Order of January 31, 2002, made further amendments which included and incorporated by reference the revised weekly and monthly family-support charts and the revised Affidavit of Financial Means effective February 11, 2002. The Per Curiam Order of April 26, 2007, included revised weekly and monthly support charts and Affidavit of Financial Means and added new biweekly and semimonthly charts effective May 3, 2007. The Per Curiam Order of June 14, 2007, was issued to correct errors in the attachments included in the Per Curiam Order of April 26, 2007. Administrative Order Number 10 as revised by the Per Curiam Order of June 14, 2007, is set out in this appendix for easy reference and includes the weekly, biweekly, semimonthly, and monthly support charts and the Affidavit of Financial Means.

**PER CURIAM:** “On April 26, 2007, this court handed down a per curiam order regarding Administrative Order No. 10 — Arkansas Child Support Guidelines, which included the following attachments to the order: (1) a revised Administrative Order No. 10, (2) revised Child Support Charts (weekly, biweekly, monthly, and bimonthly), and (3) a revised Affidavit of Financial Means. These attachments had errors in them. This per curiam order amends and corrects Administrative Order No. 10, the Biweekly Child Support Chart and the Affidavit of Financial Means.

“Administrative Order No. 10 is amended in Section III, Calculation of Support, in subsection ‘b,’ Income Which Exceeds Chart. A new Example is provided for computing child support when income exceeds the chart. The maximum weekly income in the example now conforms to the maximum weekly income on the revised chart.

“Section III is also amended in subsection ‘c,’ Nonsalaried payors, to update military terminology for ‘quarters allowance’ and to add subsistence allowance as a component of total income for military personnel.

“Two of the four Family Support Charts have been amended. The Biweekly Child Support Chart skipped from ‘Payor Net Biweekly Income’ of \$290 to \$400. The Chart has been corrected. The ‘bimonthly’

chart is renamed the ‘Semimonthly’ Family Support Chart, and all references to ‘bimonthly’ have been changed to ‘semimonthly’ in the administrative order and in the affidavit.

“A new Affidavit of Financial Means is substituted, renumbered to correct errors in numbering in the one published originally. Substantive changes include a request for three pay stubs to be attached to the affidavit after section 1.c. There are additions for clarification about income in sections 4.a. and 4.d., and about the children being supported in section 5.b. ‘Health insurance’ was added to the list of monthly expenses as section ‘m.’ The term ‘legally determined illegitimate children’ was replaced with ‘legally legitimated children’ in section 23.i. After that section is a new instruction to repeat the ‘net pay’ information on separate attachments for other salaried positions.

“We republish the April 26, 2007, per curiam order and substitute all attachments, (1) revised Administrative Order No. 10, (2) revised Child Support Charts, and (3) the revised Affidavit of Financial Means[:] PER CURIAM On February 5, 1990, this court first adopted guidelines for child support in response to P.L. 100-485 and Ark. Code Ann. § 9-12-312(a). Effective October, 1989, P.L. 100-485 required that all states adopt guidelines for setting child support; that it be a rebuttable presumption that the amount of support calculated from the child-support chart is correct; and that each state’s guidelines be reviewed and revised, as necessary, at least every four years. In response to the federal law, the Arkansas General Assembly enacted Ark. Code Ann. § 9-12-312, which included the federal provision and authorized the Arkansas Supreme Court to develop guidelines based on recommendations submitted to the court by a committee appointed by the Chief Justice. The Arkansas Supreme Court Committee on Child Support initially made recommendations to the court that formed the substance of a 1990 per curiam order. On May 13, 1991, pursuant to the committee’s recommendations, the court issued a new per curiam to supplement the original.

“In compliance with the four-year requirement of P.L. 100-485, the committee has submitted periodic reports and recommendations to the court since 1990. On October 23, 1993, the court issued a per curiam order and adopted guidelines that were published in the Court Rules Volume of the Arkansas Code Annotated. On September, 1997, the court issued a per curiam and adopted the recommendations of the child support committee. At that time, the court adopted and published Administrative Order Number 10 — Arkansas Child Support Guidelines, effective October 1, 1997. The Administrative Order incorporated by reference weekly and monthly family support charts and the Affidavit of Financial Means. On January 22, 1998, the court entered a per curiam and republished Administrative Order Number

10, making minor corrections to the child support charts and to the Affidavit of Financial Means.

"The last revision following the child support committee's periodic review was on January 31, 2002. By a per curiam order, the court adopted and republished Administrative Order Number 10 — Arkansas Child Support Guidelines, effective February 11, 2002, which incorporated by reference the weekly and monthly family support charts and the Affidavit of Financial Means. The committee has continued to study the existing guidelines, pursuant to federal and state law. Once again, the committee submitted a report to the court, including recommendations for revisions to the Administrative Order, the guidelines and the Affidavit of Financial Means.

"Having carefully considered these most recent recommendations, the court adopts and publishes revised Administrative Order Number 10 — Arkansas Child Support Guidelines, effective May 3, 2007. This Administrative Order includes and incorporates by reference revised weekly and monthly support charts and adds new biweekly and bimonthly charts. The Affidavit of Financial Means has been substantially revised and is also included and incorporated by reference into Administrative Order Number 10.

"The court thanks the committee for its service, and as it has done in the past, directs the committee and the Chief Justice, as its liaison, to continue its charge pursuant to law and the rules of this court."

#### SECTION I. AUTHORITY AND SCOPE

Pursuant to Act 948 of 1989, as amended, codified at Ark. Code Ann. § 9-12-312(a) and the Family Support Act of 1988, Pub. L. No. 100-485 (1988), the Court adopts and publishes Administrative Order Number 10 – Child Support Guidelines. This Administrative Order includes and incorporates by reference the attached weekly, biweekly, semimonthly, and monthly family support charts and the attached Affidavit of Financial Means.

It is a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the amount of child support to be awarded in any judicial proceeding for divorce, separation, paternity, or child support. The court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support.

All orders granting or modifying child support (including agreed orders) shall contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the Family Support Chart. If the order varies from the guidelines, it shall include a justification of why the order varies as may be permitted under Section V hereinafter. It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support



Chart is correct, if the court enters in the case a specific written finding within the Order that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate.

## SECTION II. DEFINITION OF INCOME

Income means any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest less proper deductions for:

1. Federal and state income tax;
2. Withholding for Social Security (FICA), Medicare, and railroad retirement;
3. Medical insurance paid for dependent children; and
4. Presently paid support for other dependents by court order, regardless of the date of entry of the order or orders.

Cases reflect that the definition of "income" is "intentionally broad and designed to encompass the widest range of sources consistent with this State's policy to interpret 'income' broadly for the benefit of the child." *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005); *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002); *McWhorter v. McWhorter*, 346 Ark. 475, 58 S.W.3d 840 (2001); and *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 20 S.W.3d 273 (2000).

## SECTION III. CALCULATION OF SUPPORT

a. **BASIC CONSIDERATIONS.** The most recent revision of the family support charts is based on the weekly, biweekly, semimonthly and monthly income of the payor parent as defined in Section II.

For purposes of computing child support payments, a month consists of 4.334 weeks. Biweekly means a payor is paid once every two weeks or 26 times during a calendar year. Bimonthly means a payor is paid twice a month or 24 times during a calendar year.

Use the lower figure on the chart for income to determine support. Do not interpolate (i.e., use the \$200.00 amount for all income pay between \$200.00 and \$210.00 per week.)

The amount paid to the Clerk of the Court or to the Arkansas Clearinghouse for administrative costs pursuant to Ark. Code Ann. § 9-12-312(e)(1)(A), § 9-10-109(b)(1)(A), and § 9-14-804(b) is not to be included as support.

b. **INCOME WHICH EXCEEDS CHART.** When the payor's income exceeds that shown on the chart, use the following percentages of the payor's weekly, biweekly, semimonthly or monthly income as defined in SECTION II to set and establish a sum certain dollar amount of support:

- One dependent: 15%
- Two dependents: 21%
- Three dependents: 25%

Four dependents: 28%

Five dependents: 30%

Six dependents: 32%

To compute child support when income exceeds the chart, add together the maximum weekly, biweekly, semimonthly, or monthly chart amount, and the percentage of the dollar amount that exceeds that figure, using the percentage above based upon the number of dependents. *Example:* The maximum on the weekly chart is \$1,000 a:week. If a payor's net weekly income is \$1,200 and support will be computed for one child—add \$149 (the chart amount of support for one child when payor's net weekly income is \$1,000) and \$30 (15% of \$200, the amount exceeding the maximum chart amount), for total child support of \$179. *Hill v. Kelly*, 368 Ark. 200, — S.W.3d — (2006) (case decided before the Administrative Order was amended to include this computation and example).

c. NONSALARIED PAYORS. For Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and children on account of the payor's disability. SSI benefits shall not be considered as income.

For Veteran's Administration disability recipients, Workers' Compensation disability recipients, and Unemployment Compensation recipients, the court shall consider those benefits as income.

For military personnel, see the latest military pay allocation chart and benefits. Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS) should be added to other income to reach total income. Military personnel are entitled to draw BAH at a "with dependents" rate if they are providing support pursuant to a court order. However, there may be circumstances in which the payor is unable to draw BAH or may draw BAH only at the "without dependents" rate. Use the BAH for which the payor is actually eligible. In some areas, military personnel receive a variable allowance. It may not be appropriate to include this allowance in calculation of income since it is awarded to offset living expenses which exceed those normally incurred.

For commission workers, support shall be calculated based on minimum draw plus additional commissions.

For self-employed payors, support shall be calculated based on the last two years' federal and state income tax returns and the quarterly estimates for the current year. A self-employed payor's income should include contributions made to retirement plans, alimony paid, and self-employed health insurance paid; this figure appears on line 22 of the current federal income tax form. Depreciation should be allowed as a deduction only to the extent that it reflects actual decrease in value of an asset. Also, the court shall consider the amount the payor is capable of earning or a net worth approach based on property, life-style, etc. For "clarification of the procedure for determining child support by using the net-worth method," see *Tucker v. Office of Child Support Enforcement*, 368 Ark. 481, — S.W.3d — (2007).

d. **IMPUTED INCOME.** If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support.

e. **SPOUSAL SUPPORT.** The chart assumes that the custodian of dependent children is employed and is not a dependent. For the purposes of calculating temporary support only, a dependent custodian may be awarded 20% of the net take-home pay for his or her support in addition to any child support awarded. For final hearings, the court should consider all relevant factors, including the chart, in determining the amount of any spousal support to be paid.

f. **ALLOCATION OF DEPENDENTS FOR TAX PURPOSES.** Allocation of dependents for tax purposes belongs to the custodial parent pursuant to the Internal Revenue Code. However, the Court shall have the discretion to grant dependency allocation, or any part of it, to the noncustodial parent if the benefit of the allocation to the noncustodial parent substantially outweighs the benefit to the custodial parent.

g. **HEALTH INSURANCE.** In addition to the award of child support, the court order shall provide for the child's health care needs, which normally would include health insurance if available to either parent at a reasonable cost.

#### SECTION IV. AFFIDAVIT OF FINANCIAL MEANS

The Affidavit of Financial Means shall be used in all family support matters. The trial court shall require each party to complete and exchange the Affidavit of Financial Means prior to a hearing to establish or modify a support order.

#### SECTION V. DEVIATION CONSIDERATIONS

a. **RELEVANT FACTORS.** Relevant factors to be considered by the court in determining appropriate amounts of child support shall include:

1. Food;
2. Shelter and utilities;
3. Clothing;
4. Medical expenses;
5. Educational expenses;
6. Dental expenses;
7. Child care (includes nursery, baby sitting, daycare or other expenses for supervision of children necessary for the custodial parent to work);
8. Accustomed standard of living;
9. Recreation;
10. Insurance;
11. Transportation expenses; and



12. Other income or assets available to support the child from whatever source, including the income of the custodial parent.

b. ADDITIONAL FACTORS. Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and maintenance of life insurance, health insurance, dental insurance for the children's benefit;

2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g., orthopedic shoes, glasses, braces, etc.);

3. The creation or maintenance of a trust fund for the children;

4. The provision or payment of special education needs or expenses of the child;

5. The provision or payment of day care for a child;

6. The extraordinary time spent with the noncustodial parent, or shared or joint custody arrangements;

7. The support required and given by a payor for dependent children, even in the absence of a court order; and

8. Where the amount of child support indicated by the chart is less than the normal costs of child care, the court shall consider whether a deviation is appropriate.

c. APPLICATION OF DEVIATION FACTORS. These deviation factors may be considered for both the custodial and the noncustodial parents.

#### SECTION VI. ABATEMENT OF SUPPORT DURING EXTENDED VISITATION

The guidelines assume that the noncustodial parent will have visitation every other weekend and for several weeks during the summer. Excluding weekend visitation with the custodial parent, in those situations in which a child spends in excess of 14 consecutive days with the noncustodial parent, the court should consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent which are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents. Any partial abatement or reduction of child support should not exceed 50% of the child support obligation during the extended visitation period of more than 14 consecutive days.

In situations in which the noncustodial parent has been granted annual visitation in excess of 14 consecutive days, the court may prorate annually the reduction in order to maintain the same amount of monthly child support payments. However, if the noncustodial parent does not exercise said extended visitations during a particular year, the noncustodial parent shall be required to pay the abated amount of child support to the custodial parent.

#### SECTION VII. PROVISIONS FOR PAYMENT

All orders of child support shall fix the dates on which payments shall be made. All support orders issued shall include a provision for

immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement as required by Ark. Code Ann. § 9-14-218(a). All income withholding forms shall be made a part of the court file by the payee or his or her attorney. Payment shall be made through the Arkansas Clearinghouse pursuant to Ark. Code Ann. § 9-14-805. Times for payment should ordinarily coincide with the payor's receipt of salary, wages, or other income.

FORMS  
WEEKLY FAMILY SUPPORT CHART

<b>Arkansas</b> <b>Weekly Family Support Chart</b> <b>Arkansas Adjusted</b>					
Payor Net Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
100	26	37	44	49	54
110	28	41	49	54	59
120	31	45	53	58	64
130	33	48	57	63	70
140	36	52	61	68	75
150	38	55	66	72	80
160	40	59	70	77	85
170	43	62	74	81	90
180	45	66	77	85	94
190	47	69	81	90	99
200	50	72	85	94	104
210	52	76	89	98	108
220	55	79	93	102	113
230	57	83	97	107	118
240	60	86	102	112	124
250	62	90	106	117	129
260	65	94	110	122	135
270	67	97	115	127	140
280	70	101	119	132	145
290	72	104	123	136	150
300	74	107	126	139	154
310	76	110	129	143	158
320	78	113	133	147	162
330	80	116	136	150	166
340	82	119	139	154	170
350	84	121	142	157	173
360	85	123	144	159	176
370	86	124	146	162	178
380	87	126	148	164	181
390	89	128	150	166	183
400	90	130	152	168	186
410	91	132	154	171	188
420	92	133	157	173	191
430	94	135	159	175	194
440	95	137	161	178	196
450	97	139	163	180	199
460	98	141	165	183	202
470	100	143	167	185	204
480	100	144	169	186	206
490	101	145	170	187	207
500	102	146	171	189	208
510	102	147	172	190	210
520	103	148	173	191	211
530	104	149	174	192	212
540	104	150	175	193	213
550	105	150	175	193	214
560	105	151	176	194	214
570	106	151	176	195	215
580	106	152	177	195	215
590	107	153	177	196	216



<b>Arkansas</b> <b>Weekly Family Support Chart</b> <b>Arkansas Adjusted</b>					
Payor Net Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
600	108	154	178	197	218
610	109	156	181	200	220
620	110	158	183	202	223
630	112	160	185	205	226
640	113	162	188	207	229
650	115	164	190	210	232
660	116	166	192	212	234
670	117	168	195	215	237
680	119	169	197	218	240
690	120	171	199	220	243
700	121	173	201	222	245
710	122	174	202	224	247
720	123	176	204	226	249
730	124	177	206	227	251
740	125	179	207	229	253
750	126	180	209	231	255
760	127	182	211	233	257
770	128	183	212	235	259
780	129	185	214	237	261
790	130	186	216	238	263
800	131	187	217	240	265
810	133	189	219	242	267
820	134	190	221	244	269
830	135	192	222	246	271
840	136	193	224	247	273
850	137	195	226	249	275
860	137	196	227	251	277
870	138	197	228	252	278
880	139	198	230	254	280
890	140	199	231	255	282
900	141	201	232	257	284
910	142	202	234	258	285
920	143	203	235	260	287
930	143	204	237	261	289
940	144	205	238	263	290
950	145	207	239	264	292
960	146	208	241	266	294
970	147	209	242	268	295
980	148	210	244	269	297
990	148	211	245	271	299
1000	149	213	246	272	300

## BI-WEEKLY FAMILY SUPPORT CHART

<b>Arkansas</b> <i>Bi-Weekly Family Support Chart</i> <b>Arkansas Adjusted</b>					
Payor Net Bi-Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
200	51	75	89	98	108
220	56	82	97	107	118
240	61	89	106	117	129
260	66	96	114	126	139
280	71	104	123	135	150
300	76	111	131	145	160
320	81	118	139	154	170
340	86	124	147	162	179
360	90	131	155	171	189
380	95	138	162	179	198
400	100	144	170	188	207
420	104	151	178	196	217
440	109	158	185	205	226
460	114	165	194	215	237
480	119	172	203	224	248
500	124	180	212	234	258
520	129	187	221	244	269
540	134	195	230	254	280
560	139	202	238	263	291
580	144	208	245	271	299
600	148	214	252	279	308
620	152	220	259	286	316
640	156	226	265	293	324
660	160	231	272	301	332
680	164	237	279	308	340
700	167	242	284	314	347
720	170	245	288	319	352
740	172	249	292	323	357
760	175	252	297	328	362
780	177	256	301	332	367
800	180	259	305	337	372
820	182	263	309	341	377
840	185	267	313	346	382
860	188	271	318	351	387
880	191	275	322	356	393
900	193	279	326	361	398
920	196	282	331	365	403
940	199	286	335	370	409
960	201	288	337	373	411
980	202	290	339	375	414
1000	203	292	341	377	416
1020	205	294	344	380	419
1040	206	296	346	382	422
1060	208	298	348	384	424
1080	209	299	349	386	426
1100	210	301	350	387	427
1120	211	302	351	388	428
1140	212	303	352	389	429
1160	213	304	353	390	431
1180	214	305	354	391	432
1200	216	307	357	394	435



## BI-WEEKLY FAMILY SUPPORT CHART

<b>Arkansas</b> <i>Bi-Weekly Family Support Chart</i> Arkansas Adjusted					
Payor Net Bi-Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
1220	218	311	361	399	441
1240	221	315	366	404	446
1260	224	319	371	409	452
1280	226	323	375	415	458
1300	229	327	380	420	463
1320	232	331	384	425	469
1340	235	335	389	430	475
1360	237	339	394	435	480
1380	240	343	398	440	486
1400	242	346	402	444	490
1420	244	349	405	447	494
1440	246	352	408	451	498
1460	248	355	412	455	502
1480	251	357	415	458	506
1500	253	360	418	462	510
1520	255	363	421	466	514
1540	257	366	425	469	518
1560	259	369	428	473	522
1580	261	372	431	477	526
1600	263	375	435	480	530
1620	265	378	438	484	534
1640	267	381	441	488	538
1660	269	384	445	491	542
1680	271	386	448	495	546
1700	273	389	451	498	550
1720	275	392	454	501	554
1740	277	394	457	505	557
1760	278	396	459	508	560
1780	280	399	462	511	564
1800	282	401	465	514	567
1820	283	404	468	517	570
1840	285	406	470	520	574
1860	287	408	473	523	577
1880	288	411	476	526	581
1900	290	413	479	529	584
1920	292	416	481	532	587
1940	294	418	484	535	591
1960	295	420	487	538	594
1980	297	423	490	541	597
2000	299	425	493	544	601



## SEMI-MONTHLY FAMILY SUPPORT CHART

<b>Arkansas</b> <b>Semi-Monthly Family Support Chart</b> <b>Arkansas Adjusted</b>					
Payor Net Semi-Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
250	64	93	110	122	134
275	70	102	121	133	147
300	76	111	131	145	160
325	82	120	142	157	173
350	88	129	152	168	186
375	94	137	162	179	197
400	100	145	171	189	209
425	106	154	181	200	221
450	112	162	191	211	232
475	118	170	200	221	244
500	124	179	211	233	258
525	130	189	222	245	271
550	137	198	233	258	284
575	143	207	244	270	298
600	149	216	255	282	311
625	155	225	265	293	323
650	160	232	273	302	333
675	165	239	281	311	343
700	170	246	290	320	354
725	175	253	298	329	364
750	180	260	306	338	373
775	183	265	311	344	380
800	186	269	316	350	386
825	189	274	322	355	392
850	192	278	327	361	398
875	196	282	332	367	405
900	199	287	337	373	411
925	202	292	343	379	418
950	206	297	348	384	424
975	210	302	353	390	431
1000	213	307	359	396	438
1025	216	311	363	402	443
1050	218	313	366	405	447
1075	220	316	369	407	450
1100	222	318	371	410	453
1125	223	320	374	413	456
1150	225	323	377	416	460
1175	226	324	378	418	461
1200	228	326	379	419	463
1225	229	327	381	421	464
1250	230	329	382	422	466
1275	231	330	383	423	467
1300	233	333	386	427	471
1325	237	338	392	433	478
1350	240	343	398	440	485
1375	244	348	404	446	492
1400	247	353	409	452	499
1425	251	358	415	459	507
1450	254	363	421	465	514

<b>Arkansas</b>					
<b><i>Semi-Monthly Family Support Chart</i></b>					
<b>Arkansas Adjusted</b>					
<b>Payor Net Semi-Monthly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>
1475	257	367	427	472	521
1500	261	372	432	478	527
1525	263	376	436	482	532
1550	266	379	440	487	537
1575	268	383	445	491	542
1600	271	387	449	496	547
1625	274	390	453	500	552
1650	276	394	457	505	557
1675	279	397	461	510	563
1700	281	401	465	514	568
1725	284	405	469	519	573
1750	287	408	474	523	578
1775	289	412	478	528	583
1800	292	416	482	532	588
1825	294	419	486	537	593
1850	297	422	490	541	597
1875	299	425	493	545	601
1900	301	428	497	549	606
1925	303	431	500	552	610
1950	305	434	503	556	614
1975	307	437	507	560	618
2000	309	440	510	564	623
2025	311	443	514	568	627
2050	313	446	517	572	631
2075	316	449	521	575	635
2100	318	452	524	579	639
2125	320	455	528	583	644
2150	322	458	531	587	648
2175	324	461	535	591	652
2200	326	464	538	595	656
2225	328	467	541	598	661
2250	330	470	545	602	665
2275	333	473	548	606	669
2300	335	476	552	610	673
2325	337	479	555	614	677
2350	339	482	559	617	682
2375	341	485	562	621	686
2400	342	487	563	623	687
2425	343	488	565	624	689
2450	344	489	566	625	690
2475	345	490	567	627	692
2500	346	491	568	628	693



## MONTHLY FAMILY SUPPORT CHART

<b>Arkansas</b> <b>Monthly Family Support Chart</b> <b>Arkansas Adjusted</b>					
Payor Net Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
500	127	186	220	243	269
550	140	204	242	267	295
600	152	222	263	290	321
650	165	240	284	314	347
700	177	257	304	336	371
750	189	274	324	358	395
800	200	291	343	379	418
850	212	307	362	400	441
900	224	324	381	421	465
950	235	340	400	442	488
1000	248	359	422	467	515
1050	261	377	444	491	542
1100	273	396	466	515	569
1150	286	414	488	540	596
1200	298	433	511	564	623
1250	310	449	530	585	646
1300	320	464	546	604	666
1350	330	478	563	622	687
1400	340	493	580	640	707
1450	351	507	596	659	727
1500	360	521	612	676	747
1650	366	530	622	688	759
1600	373	538	633	699	772
1650	379	547	643	711	784
1700	385	556	653	722	797
1750	391	565	664	733	810
1800	398	574	674	745	823
1850	405	584	685	757	836
1900	412	594	696	769	849
1950	419	603	707	781	862
2000	426	613	718	793	875
2050	432	622	727	803	887
2100	436	626	732	809	893
2150	439	631	738	815	900
2200	443	636	743	821	906
2250	447	641	748	827	913
2300	450	646	753	833	919
2350	453	649	756	836	923
2400	455	652	759	839	926
2450	458	655	761	841	929
2500	460	657	764	844	932
2550	463	660	766	847	935
2600	467	666	773	854	942
2650	474	676	784	866	957
2700	481	686	796	879	971
2750	487	695	807	892	985
2800	494	705	819	905	999
2850	501	715	830	918	1013
2900	508	725	842	930	1027
2950	515	735	854	943	1041



**Arkansas**  
**Monthly Family Support Chart**  
**Arkansas Adjusted**

Payor Net Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
3000	521	744	864	955	1054
3050	526	751	873	964	1064
3100	532	759	881	973	1075
3150	537	766	889	982	1085
3200	542	773	897	992	1095
3250	547	780	906	1001	1105
3300	552	788	914	1010	1115
3350	558	795	922	1019	1125
3400	563	802	930	1028	1135
3450	568	809	939	1037	1145
3500	573	817	947	1046	1155
3550	578	824	955	1056	1165
3600	583	831	964	1065	1175
3650	589	839	972	1074	1186
3700	593	845	979	1082	1195
3750	597	851	986	1090	1203
3800	602	857	993	1097	1211
3850	606	863	1000	1105	1220
3900	610	869	1007	1113	1228
3950	614	875	1014	1120	1237
4000	619	881	1021	1128	1245
4050	623	887	1028	1136	1254
4100	627	893	1035	1143	1262
4150	631	899	1041	1151	1270
4200	635	905	1048	1158	1279
4250	640	911	1055	1166	1287
4300	644	917	1062	1174	1296
4350	648	923	1069	1181	1304
4400	652	929	1076	1189	1313
4450	657	935	1083	1197	1321
4500	661	941	1090	1204	1330
4550	665	947	1097	1212	1338
4600	669	953	1104	1220	1346
4650	674	959	1111	1227	1355
4700	678	965	1118	1235	1363
4750	682	971	1124	1243	1372
4800	684	973	1127	1245	1375
4850	686	976	1129	1248	1378
4900	688	978	1132	1251	1381
4950	690	980	1134	1253	1383
5000	691	983	1136	1256	1386

**IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS**  
**(Domestic Relations Division)**

STATE OF ARKANSAS     }  
   }  
 COUNTY OF \_\_\_\_\_ }

**AFFIDAVIT OF FINANCIAL MEANS**

Revised 6/2007

\_\_\_\_\_  
 Plaintiff

V.

No. \_\_\_\_\_

\_\_\_\_\_  
 Defendant

The affiant, being duly sworn, says under penalty of perjury that affiant is the **(PLAINTIFF) (DEFENDANT)** (~~strike out one~~) herein, has prepared this financial statement, knows the contents thereof, and that it is true and correct.

**MY INCOME**

(Complete Block 23 on page 5 FIRST)

1.	How often are you paid? ___ weekly ___ biweekly (26 times a year) ___ monthly ___ semimonthly (twice a month—24 times a year) ___ other	Amount
1.a.	<b>Net Pay:</b> (Take-home) (from line 23.h.)	\$ _____
1.b.	<b>Allowable Deductions:</b> (from line 23.g.)	\$ _____
1.c.	<b>Other Deductions:</b> (from line 24.i.)	\$ _____

Please attach your last three (3) pay stubs to this affidavit.

2. Number of dependents, including self, claimed for tax withholding purposes: \_\_\_\_\_

3. Additional amount, if any, withheld for tax purposes:         \$ \_\_\_\_\_

OTHER INCOME, FUNDS & LIQUID ASSETS AVAILABLE TO ME

4.	Funds:	Amount:	Source of funds/assets:
4.a.	All other income received (state source, amount, and how often received):	\$	See attached sheet.
4.b.	Cash on hand or in banks:	\$	
4.c.	Stocks & bonds, etc.:	\$	
4.d.	All other child support:	\$	

THE CHILDREN

5.	Financial responsibility of my children:	Number of children:
5.a.	Number of children I have with opposing party:	#
5.b.	Number of other children I have and support:	#
5.c.	Total Number of children living with me whom I support:	#
5.d.	Full Name of child(ren) born or legally adopted of this marriage:	Date of Birth:
1.		
2.		
3.		
4.		



**MY MONTHLY EXPENSES**

6.	Expense:	Amount:		Expense:	Amount:
a.	Rent/house payment:	\$	k.	Drugs:	\$
b.	Gas & electricity:	\$	l.	Life Insurance:	\$
c.	Water:	\$	m.	Health Insurance:	\$
d.	Telephone:	\$	n.	Auto Insurance:	\$
e.	Food:	\$	o.	Fire Insurance:	\$
f.	Clothing:	\$	p.	Transportation:	\$
g.	Laundry & cleaning:	\$	q.	Other:	\$
h.	Child care:	\$	r.	Other:	\$
i.	Car payment:	\$	s.	Other:	\$
j.	Medical:	\$	t.	Other:	\$
				<b>Total:</b>	<b>\$</b>

Place a check mark by all expenses which are not being paid currently.

**CREDITORS**

(Complete items 26, 27, & 28 on pages 6 & 7 FIRST)

	<b>Whose Debts:</b>	<b>Total Owed: (A)</b>	<b>Total of Monthly payments: (B)</b>
7.	Joint Debts:	\$	\$
8.	Plaintiff's Debts:	\$	\$
9.	Defendant's Debts:	\$	\$

GENERAL INFORMATION ABOUT PARTIES

(Do not guess concerning information about opposing party)

	Information about:	Plaintiff	Defendant
10.	Name:		
11.	Address:		
12.	SSN: (last four digits)		
13.	Date of Birth:		
14.	Phone No.: (home)		
15.	Phone No.: (work)		
16.	Employer:		
17.	Employer Address:		
18.	Employer Phone No.:		
19.	Opposing party's net ___ weekly, ___ biweekly, ___ monthly or ___ semimonthly income:		
20.	Other income of opposing party:		
21.	Number of children of opposing party:		

INCOME FROM SALARY

22. How often are you paid?

\_\_\_ weekly    \_\_\_ biweekly    \_\_\_ semimonthly    \_\_\_ monthly    \_\_\_ other  
52 times a year    26 times a year    24 times a year    12 times a year    Explain

**YOUR NET PAY****(Gross pay minus payroll deductions)**

23.	<b>Income:</b>		<b>Amount</b>	
23.a.	Gross Wages per pay period:		\$	xxxxxxxxxxxx
		<b>Deductions per check:</b>	xxxxxxx	<b>Amount</b>
23.b.		Federal Income Taxes Withheld:	xxxxxxx	\$
23.c.		State Income Taxes Withheld:	xxxxxxx	\$
23.d.		F.I.C.A., and medicare <sup>1</sup> :	xxxxxxx	\$
23.e.		Health Insurance (children only) <sup>2</sup> :	xxxxxxx	\$
23.f.		Court ordered child support <sup>3</sup> :	xxxxxxx	\$
23.g.		<b>Total Withheld: (b) thru (f) above: Carry to line 1.b. on first page.</b>	xxxxxxx	\$
23.h.	<b>Net take-home pay per pay period: (Subtract 23.g from 23.a)</b>			\$
23.i.	<sup>1</sup> F.I.C.A. is Social Security; Include any railroad retirement in F.I.C.A. block. <sup>2</sup> Include the amount you pay to cover the children only. <sup>3</sup> Include any court ordered child support for dependents of previous marriages or previously legally legitimated children and adopted children withheld from current paycheck.			

Repeat salary information on a separate attachment for any other salaried positions you have.

**OTHER DEDUCTIONS FROM MY PAYCHECK**

24.	<b>Item:</b>	<b>Amount:</b>
24.a.	Union dues:	\$
24.b.	Credit Union, thrift plan payments:	\$
24.c.	Pension Benefits and stock purchase plans:	\$
24.d.	Charitable contributions:	\$



24.e.	Debt payments and/or garnishments:	\$
24.f.	Life Insurance payments:	\$
24.g.	Other (Identify):	\$
24.h.	Other (Identify):	\$
24.i.	Total Withheld (total of 24.a. thru 24.h.) (Carry to 1.c. on page 1):-	\$

The above deductions will not be considered as direct deductions from your gross pay.  
However, they may affect the amount of the child support obligation.

OTHER COURT ORDERED CHILD SUPPORT

25.	Other court-ordered child support being paid other than by deduction: Attach child support order and proof of payment.	\$
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CREDITORS & DEBTS

26. Debts in the names of BOTH PARTIES are:

	Creditor:	Total amount owed:	Monthly payment:
26.a.		\$	\$
26.b.		\$	\$
26.c.		\$	\$
26.d.		\$	\$
26.e.		\$	\$
26.f.		\$	\$
26.g.		\$	\$
26.h.		\$	\$
	Totals:	\$	\$

Attach additional schedules as needed, and then total - Carry to lines 7(A) & 7(B) on page 3.

27. Debts in the name of only the PLAINTIFF are:

	Creditor:	Total amount owed:	Monthly payment:
27.a.		\$	\$

27.b.		\$	\$
27.c.		\$	\$
27.d.		\$	\$
27.e.		\$	\$
	<b>Totals:</b>	\$	\$

Attach additional schedules as needed, and then total - Carry to lines 8(A) & 8(B) on page 3.

28. Debts in the name of only the DEFENDANT are:

	<b>Creditor:</b>	<b>Total amount owed:</b>	<b>Monthly payment:</b>
28.a.		\$	\$
28.b.		\$	\$
28.c.		\$	\$
28.d.		\$	\$
28.e.		\$	\$
	<b>Totals:</b>	\$	\$

Attach additional schedules as needed, and then total - Carry to lines 9(A) & 9(B) on page 3.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

### NOTICE

**BOTH PARTIES MUST COMPLETE AND EXCHANGE THIS SEVEN-PAGE AFFIDAVIT PRIOR TO THE TEMPORARY HEARING. BOTH PARTIES MUST SUPPLY THE ORIGINAL NOTARIZED AFFIDAVIT TO THE COURT. THE COURT WILL PUNISH PERJURY BY APPROPRIATE ACTION.**

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